

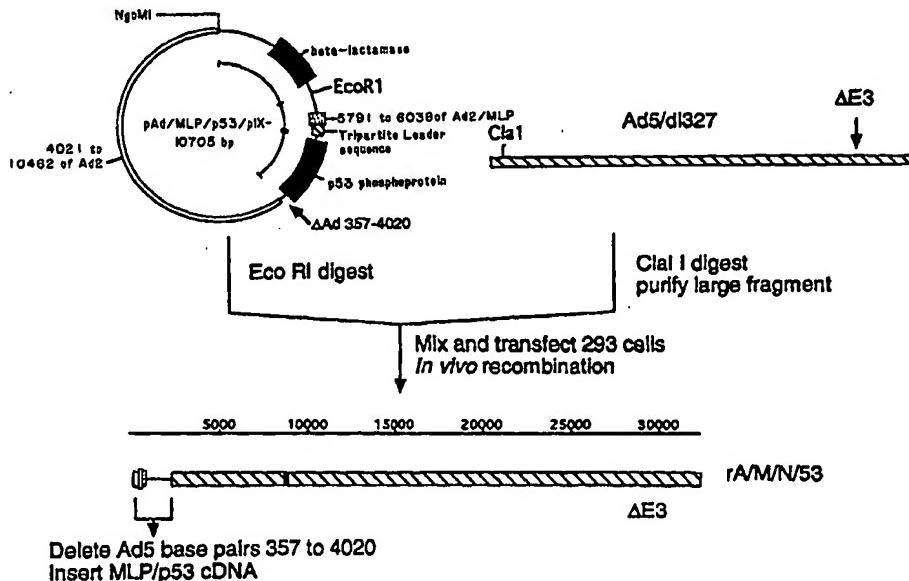


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(71) Applicant: CANJI, INC. [US/US]; Suite 302, 9030 Science Park Road, San Diego, CA 92121 (US).	Published <i>Without international search report and to be republished upon receipt of that report.</i>
(72) Inventors: GREGORY, Richard, J.; 4789 Gateshead Road, Carlsbad, CA 92008 (US). WILLS, Ken, N.; 821 Bluffcrest Lane, Encinitas, CA 92024 (US). MANEVAL, Daniel, C.; 12578 Cavallo Street, San Diego, CA 92130 (US).	
(74) Agents: STEINHARDT, Paul, C. et al.; Campbell and Flores, Suite 700, 4370 La Jolla Village Drive, San Diego, CA 92122 (US).	

## (54) Title: RECOMBINANT ADENOVIRAL VECTOR AND METHODS OF USE



## (57) Abstract

This invention provides a recombinant adenovirus expression vector characterized by the partial or total deletion of the adenoviral protein IX DNA and having a gene encoding a foreign protein or a functional fragment or mutant thereof. Transformed host cells and a method of producing recombinant proteins and gene therapy also are included within the scope of this invention. Thus, for example, the adenoviral vector of this invention can contain a foreign gene for the expression of a protein effective in regulating the cell cycle, such as p53, Rb, or mitosin, or in inducing cell death, such as the conditional suicide gene thymidine kinase. (The latter must be used in conjunction with a thymidine kinase metabolite in order to be effective).

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**RECOMBINANT ADENOVIRAL VECTOR AND METHODS OF USE**

**BACKGROUND OF THE INVENTION**

This application is a continuation-in-part of U.S. Serial No. 08/233,777, filed May 19, 1994, which is a 5 continuation-in-part of U.S. Serial No. 08/142,669 filed October 25, 1993, the contents of which are hereby incorporated by reference into the present disclosure.

Throughout this application, various publications are referred to by citations within parentheses and in the 10 bibliographic description, immediately preceding the claims. The disclosures of these publications are hereby incorporated by reference into the present disclosure to more fully describe the state of the art to which this invention pertains.

15 Production of recombinant adenoviruses useful for gene therapy requires the use of a cell line capable of supplying in *trans* the gene products of the viral E1 region which are deleted in these recombinant viruses. At present the only useful cell line available is the 293 cell line 20 originally described by Graham et al. in 1977. 293 cells contain approximately the left hand 12% (4.3 kb) of the adenovirus type 5 genome (Aiello (1979) and Spector (1983)).

Adenoviral vectors currently being tested for 25 gene therapy applications typically are deleted for Ad2 or Ad5 DNA extending from approximately 400 base pairs from the 5' end of the viral genome to approximately 3.3 kb from the 5' end, for a total E1 deletion of 2.9 kb. Therefore, there exists a limited region of homology of approximately 30 1 kb between the DNA sequence of the recombinant virus and the Ad5 DNA within the cell line. This homology defines a region of potential recombination between the viral and cellular adenovirus sequences. Such a recombination results in a phenotypically wild-type virus bearing the Ad5 35 E1 region from the 293 cells. This recombination event

presumably accounts for the frequent detection of wild-type adenovirus in preparations of recombinant virus and has been directly demonstrated to be the cause of wild-type contamination of the Ad2 based recombinant virus Ad2/CFTR-1  
5 (Rich et al. (1993)).

Due to the high degree of sequence homology within the type C adenovirus subgroup such recombination is likely to occur if the vector is based on any group C adenovirus (types 1, 2, 5, 6).

10 In small scale production of recombinant adenoviruses, generation of contaminating wild-type virus can be managed by a screening process which discards those preparations of virus found to be contaminated. As the scale of virus production grows to meet expected demand for  
15 genetic therapeutics, the likelihood of any single lot being contaminated with a wild-type virus also will rise as well as the difficulty in providing non-contaminated recombinant preparations.

There will be over one million new cases of  
20 cancer diagnosed this year, and half that number of cancer-related deaths (American Cancer Society, 1993). p53 mutations are the most common genetic alteration associated with human cancers, occurring in 50-60% of human cancers (Hollstein et al. (1991); Bartek et al. (1991); Levine  
25 (1993)). The goal of gene therapy in treating p53 deficient tumors, for example, is to reinstate a normal, functional copy of the wild-type p53 gene so that control of cellular proliferation is restored. p53 plays a central role in cell cycle progression, arresting growth so that  
30 repair or apoptosis can occur in response to DNA damage. Wild-type p53 has recently been identified as a necessary component for apoptosis induced by irradiation or treatment with some chemotherapeutic agents (Lowe et al. (1993) A and B). Due to the high prevalence of p53 mutations in human

tumors, it is possible that tumors which have become refractory to chemotherapy and irradiation treatments may have become so due in part to the lack of wild-type p53. By resupplying functional p53 to these tumors, it is 5 reasonable that they now are susceptible to apoptosis normally associated with the DNA damage induced by radiation and chemotherapy.

One of the critical points in successful human tumor suppressor gene therapy is the ability to affect a 10 significant fraction of the cancer cells. The use of retroviral vectors has been largely explored for this purpose in a variety of tumor models. For example, for the treatment of hepatic malignancies, retroviral vectors have been employed with little success because these vectors are 15 not able to achieve the high level of gene transfer required for *in vivo* gene therapy (Huber, B.E. et al., 1991; Caruso M. et al., 1993).

To achieve a more sustained source of virus production, researchers have attempted to overcome the 20 problem associated with low level of gene transfer by direct injection of retroviral packaging cell lines into solid tumors (Caruso, M. et al., 1993; Ezzidine, Z.D. et al., 1991; Culver, K.W. et al., 1992). However, these methods are unsatisfactory for use in human patients 25 because the method is troublesome and induces an inflammatory response against the packaging cell line in the patient. Another disadvantage of retroviral vectors is that they require dividing cells to efficiently integrate and express the recombinant gene of interest (Huber, B.E. 30 1991). Stable integration into an essential host gene can lead to the development or inheritance of pathogenic diseased states.

Recombinant adenoviruses have distinct advantages over retroviral and other gene delivery methods (for

review, see Siegfried (1993)). Adenoviruses have never been shown to induce tumors in humans and have been safely used as live vaccines (Straus (1984)). Replication deficient recombinant adenoviruses can be produced by 5 replacing the E1 region necessary for replication with the target gene. Adenovirus does not integrate into the human genome as a normal consequence of infection, thereby greatly reducing the risk of insertional mutagenesis possible with retrovirus or adeno-associated viral (AAV) 10 vectors. This lack of stable integration also leads to an additional safety feature in that the transferred gene effect will be transient, as the extrachromosomal DNA will be gradually lost with continued division of normal cells. Stable, high titer recombinant adenovirus can be produced 15 at levels not achievable with retrovirus or AAV, allowing enough material to be produced to treat a large patient population. Moreover, adenovirus vectors are capable of highly efficient *in vivo* gene transfer into a broad range of tissue and tumor cell types. For example, others have 20 shown that adenovirus mediated gene delivery has a strong potential for gene therapy for diseases such as cystic fibrosis (Rosenfeld et al. (1992); Rich et al. (1993)) and  $\alpha_1$ -antitrypsin deficiency (Lemarchand et al. (1992)). Although other alternatives for gene delivery, such as 25 cationic liposome/DNA complexes, are also currently being explored, none as yet appear as effective as adenovirus mediated gene delivery.

As with treating p53 deficient tumors, the goal of gene therapy for other tumors is to reinstate control of 30 cellular proliferation. In the case of p53, introduction of a functional gene reinstates cell cycle control allowing for apoptotic cell death induced by therapeutic agents. Similarly, gene therapy is equally applicable to other tumor suppressor genes which can be used either alone or in 35 combination with therapeutic agents to control cell cycle progression of tumor cells and/or induce cell death.

Moreover, genes which do not encode cell cycle regulatory proteins, but directly induce cell death such as suicide genes or, genes which are directly toxic to the cell can be used in gene therapy protocols to directly eliminate the 5 cell cycle progression of tumor cells.

Regardless of which gene is used to reinstate the control of cell cycle progression, the rationale and practical applicability of this approach is identical. Namely, to achieve high efficiencies of gene transfer to 10 express therapeutic quantities of the recombinant product. The choice of which vector to use to enable high efficiency gene transfer with minimal risk to the patient is therefore important to the level of success of the gene therapy treatment.

15 Thus, there exists a need for vectors and methods which provide high level gene transfer efficiencies and protein expression which provide safe and effective gene therapy treatments. The present invention satisfies this need and provides related advantages as well.

20

#### SUMMARY OF THE INVENTION

This invention provides a recombinant adenovirus expression vector characterized by the partial or total deletion of the adenoviral protein IX DNA and having a gene encoding a foreign protein or a functional fragment or 25 mutant thereof. Transformed host cells and a method of producing recombinant proteins and gene therapy also are included within the scope of this invention.

Thus, for example, the adenoviral vector of this invention can contain a foreign gene for the expression of 30 a protein effective in regulating the cell cycle, such as p53, Rb, or mitosin, or in inducing cell death, such as the conditional suicide gene thymidine kinase. (The latter

must be used in conjunction with a thymidine kinase metabolite in order to be effective).

BRIEF DESCRIPTION OF THE FIGURES

Figure 1 shows a recombinant adenoviral vector of  
5 this invention. This construct was assembled as shown in  
Figure 1. The resultant virus bears a 5' deletion of  
adenoviral sequences extending from nucleotide 356 to 4020  
and eliminates the E1a and E1b genes as well as the entire  
protein IX coding sequence, leaving the polyadenylation  
10 site shared by the E1b and pIX genes intact for use in  
terminating transcription of any desired gene.

Figure 2 shows the amino acid sequence of p110<sup>RB</sup>.

Figure 3 shows a DNA sequence encoding a  
retinoblastoma tumor suppressor protein.

15 Figure 4 shows schematic of recombinant  
p53/adenovirus constructs within the scope of this  
invention. The p53 recombinants are based on Ad 5 and have  
had the E1 region of nucleotides 360-3325 replaced with a  
1.4 kb full length p53 cDNA driven by the Ad 2 MLP (A/M/53)  
20 or human CMV (A/C/53) promoters followed by the Ad 2  
tripartite leader cDNA. The control virus A/M has the same  
Ad 5 deletions as the A/M/53 virus but lacks the 1.4 kb p53  
cDNA insert. The remaining E1b sequence (705 nucleotides)  
have been deleted to create the protein IX deleted  
25 constructs A/M/N/53 and A/C/N/53. These constructs also  
have a 1.9 kb Xba I deletion within adenovirus type 5  
region E3.

Figures 5A and 5B show p53 protein expression in  
tumor cells infected with A/M/53 and A/C/53. Figure 5A)  
30 Saos-2 (osteosarcoma) cells were infected at the indicated  
multiplicities of infection (MOI) with either the A/M/53 or

A/C/53 purified virus and harvested 24 hours later. The p53 antibody pAb 1801 was used to stain immunoblots of samples loaded at equal total protein concentrations. Equal protein concentration of SW480 cell extracts, which 5 overexpress mutant p53 protein, were used as a marker for p53 size. "O" under the A/C/53 heading indicates a mock infection, containing untreated Saos-2 lysate. Figure 5B) Hep 3B (hepatocellular carcinoma) cells were infected with the A/M/53 or A/C/53 virus at the indicated MOI and 10 analyzed as in part A.) The arrow indicates the position of the p53 protein.

Figures 6A through 6C show p53 dependent Saos-2 morphology change. Subconfluent ( $1 \times 10^5$  cells/10 cm plate) Saos-2 cells were either uninfected (A), infected at an MOI 15 = 50 with (B) the control A/M virus or (C) the A/C/53 virus. The cells were photographed 72 hours post-infection.

Figure 7 shows p53 dependent inhibition of DNA synthesis in human tumor cell lines by A/M/N/53 and 20 A/C/N/53. Nine different tumor cell lines were infected with either control adenovirus A/M (-x-x-), or the p53 expressing A/M/N/53 (-Δ-Δ-), or A/C/N/53 (-O-O-) virus at increasing MOI as indicated. The tumor type and p53 status is noted for each cell line (wt = wild type, null = no 25 protein expressed, mut = mutant protein expressed). DNA synthesis was measured 72 hours post-infection as described below in Experiment No. II. Results are from triplicate measurements at each dose (mean+/- SD), and are plotted as % of media control versus MOI. \* H69 cells were only 30 tested with A/M and A/M/N/53 virus.

Figure 8 shows tumorigenicity of p53 infected Saos-2 cells in nude mice. Saos-2 cells were infected with either the control A/M virus or the p53 recombinant A/M/N/53 at MOI = 30. Treated cells were injected

subcutaneously into the flanks of nude mice, and tumor dimensions were measured (as described in Experiment No. II) twice per week for 8 weeks. Results are plotted as tumor size versus days post tumor cell implantation for 5 both control A/M (-x-x-) and A/M/N/53 (-Δ-Δ-) treated cells. Error bars represent the mean tumor size =/- SEM for each group of 4 animals at each time point.

Figure 9 is expression of rAd/p53 RNA in established tumors. H69 (SCLC) cells were injected 10 subcutaneously into nude mice and allowed to develop tumors for 32 days until reaching a size of approximately 25-50 mm<sup>3</sup>. Mice were randomized and injected peritumorally with 2 x 10<sup>9</sup> pfu of either control A/C/β-gal or A/C/53 virus. Tumors were excised 2 and 7 days post injection, and polyA 15 RNA was prepared from each tumor sample. RT-PCR was carried out using equal RNA concentrations and primers specific for recombinant p53 message. PCR amplification was for 30 cycles at 94°C 1 min., 55°C 1.5 min., 72°C 2 min., and a 10 min., 72°C final extension period in an Omniprime 20 thermalcycler (Hybaid). The PCR primers used were a 5' Tripartite Leader cDNA (5' - CGCCACCGAGGGACCTGAGCGAGTC-3') and a 3' p53 primer (5' - TTCTGGGAAGGGACAGAAGA-3'). Lanes 1, 2, 4, and 5 are p53 treated samples excised at day 2 or 7 as indicated. Lanes 3 and 6 are from β-gal treated 25 tumors. Lanes 7, 8, and 9 are replicates of lanes 4, 5, and 6 respectively, amplified with actin primers to verify equal loading. Lane 10 is a positive control using a tripartite/p53 containing plasmid.

Figures 10A and 10B show *in vivo* tumor suppression and increased survival time with A/M/N/53. H69 30 (SCLC) tumor cells were injected subcutaneously into nude mice and allowed to develop for 2 weeks. Peritumoral injections of either buffer alone (---), control A/M adenovirus (-x-x-), or A/M/N/53 (-Δ-Δ), both viruses (2 x 35 10<sup>9</sup> pfu/injection) were administered twice per week for a

total of 8 doses. Tumor dimensions were measured twice per week and tumor volume was estimated as described in Experiment No. II. A) Tumor size is plotted for each virus versus time (days) post inoculation of H69 cells. Error bars indicate the mean tumor size +/- SEM for each group of 5 animals. Arrows indicate days virus injections. B) Mice were monitored for survival and the fraction of mice surviving per group versus time post inoculation of buffer alone (----), control A/M (· · · · ·) or A/M/N/53 (—) virus treated H69 cells is plotted.

Figures 11A through 11C show maps of recombinant plasmid constructions. Plasmids were constructed as detailed in below. Bold lines in the constructs indicate genes of interest while boldface type indicates the restriction sites used to generate the fragments to be ligated together to form the subsequent plasmid as indicated by the arrows. In Figure 11A, the plasmid pACNTK was constructed by subcloning the HSV-TK gene from pMLBTK (ATCC No. 39369) into the polylinker of a cloning vector, followed by isolation of the TK gene with the desired ends for cloning into the pACN vector. The pACN vector contains adenoviral sequences necessary for *in vivo* recombination to occur to form recombinant adenovirus (see Figure 12). In Figure 11B, the construction of the plasmid pAANTK is shown beginning with PCR amplified fragments encoding the  $\alpha$ -fetoprotein enhancer (AFP-E) and promoter (AFP-P) regions subcloned through several steps into a final plasmid where the AFP enhancer and promoter are upstream of the HSV-TK gene followed by adenovirus Type 2 sequences necessary for *in vivo* recombination to occur to form recombinant adenovirus. In Figure 11C, the construction of the plasmid pAANCAT is shown beginning with the isolation of the chloramphenicol acetyltransferase (CAT) gene from a commercially available plasmid and subcloning it into the pAAN plasmid (see above), generating the final plasmid pAANCAT where the AFP enhancer/promoter direct

transcription of the CAT gene in an adenovirus sequence background.

Figure 12 is a schematic map of recombinant adenoviruses ACNTK, AANTK and AANCAT. To construct 5 recombinant adenoviruses from the plasmids described in Figure 11, 4 parts (20 µg) of either plasmid pACNTK, pAANTK, or pAANCAT were linearized with Eco R1 and cotransfected with 1 part (5 µg) of the large fragment of Cla 1 digested recombinant adenovirus (rAC $\beta$ -gal) containing 10 an E3 region deletion (Wills et al., 1994). In the resulting viruses, the Ad 5 nucleotides 360 - 4021 are replaced by either the CMV promoter and tripartite leader cDNA (TPL) or the  $\alpha$ -fetoprotein enhancer and promoter (AFP) driving expression of the HSV-1 TK or CAT gene as 15 indicated. The resulting recombinant adenoviruses are designated ACNTK, AANTK, and AANCAT respectively.

Figure 13 shows promoter specificity of CAT expression in the recombinant adenoviral vectors. Two (2) X 10<sup>6</sup> of the designated cell lines were infected at MOIs = 20 30 or 100 of the recombinant adenovirus AANCAT as indicated or left uninfected (UN). Hep G2 and Hep 3B cells express  $\alpha$ -fetoprotein whereas the other cell lines do not. After three days, the cells were harvested, extract volumes were adjusted for equal total protein concentrations, and CAT 25 activity was measured as described in Methods section, below. An equal number of uninfected cells served as individual controls for background CAT activity, while <sup>14</sup>C labelled chloramphenicol (<sup>14</sup>C-only) and extract from a stable cell line (B21) expressing CAT activity served as 30 negative and positive controls respectively. Percent conversion of acetyl CoA is indicated, demonstrating that CAT expression is limited to those cells expressing  $\alpha$ -fetoprotein.

Figure 14 shows the effects of TK/GCV treatment on hepatocellular carcinoma cell lines and the effects of promoter specificity. Hep-G2 (AFP positive) and HLF (AFP negative) cell lines were infected overnight with ACNTK [-Δ-] AANTK [-▲-], or control ACN [-□-] virus at an infection multiplicity of 30 and subsequently treated with a single dose of ganciclovir at the indicated concentrations. Cell proliferation was assessed by adding  $^3\text{H}$ -thymidine to the cells approximately 18 hours prior to harvest.  $^3\text{H}$ -thymidine incorporation into cellular nucleic acid was measured 72 hours after infection (Top Count, Packard and expressed as a percent (mean +/- S.D.) of untreated control. The results show a non-selective dose dependent inhibition of proliferation with the CMV driven construct, while AFP driven TK selectively inhibits Hep-G2.

Figure 15 shows cytotoxicity of ACNTK plus ganciclovir in HCC. HLF cells were infected at an MOI of 30 with either ACNTK [-●-] or the control virus ACN [-□-] and treated with ganciclovir at the indicated doses. Seventy-two (72) hours after ganciclovir treatment, the amount of lactate dehydrogenase (LDH) released into the cell supernatant were measured colorimetrically and plotted (mean+/-SEM) versus ganciclovir concentration for the two virus treated groups.

Figures 16A and 16B show the effect of ACNTK plus ganciclovir on established hepatocellular carcinoma (HCC) tumors in nude mice. One (1)  $\times 10^7$  Hep 3B cells were injected subcutaneously into the flank of female nude mice and allowed to grow for 27 days. Mice then received intratumoral and peritumoral injections of either the ACNTK [-●-] or control ACN [-□-] virus ( $1 \times 10^9$  iu in  $100 \mu\text{l}$  volume) every other day for a total of three doses (indicated by arrows). Injections of ganciclovir (100 mg/kg ip) began 24 hours after the initial virus dose and continued for a total of 10 days. In Figure 6A, tumor

sizes are plotted for each virus versus days post infection (mean +/- SEM). In Figure 6B, body weight for each virus-treated animal group is plotted as the mean +/-SEM versus days post infection.

5

DETAILED DESCRIPTION OF THE INVENTION

To reduce the frequency of contamination with wild-type adenovirus, it is desirable to improve either the virus or the cell line to reduce the probability of recombination. For example, an adenovirus from a group 10 with low homology to the group C viruses could be used to engineer recombinant viruses with little propensity for recombination with the Ad5 sequences in 293 cells. However, an alternative, easier means of reducing the recombination between viral and cellular sequences is to 15 increase the size of the deletion in the recombinant virus and thereby reduce the extent of shared sequence between it and the Ad5 genes in the 293 cells.

Deletions which extend past 3.5 kb from the 5' end of the adenoviral genome affect the gene for adenoviral 20 protein IX and have not been considered desirable in adenoviral vectors (see below).

The protein IX gene of the adenoviruses encodes a minor component of the outer adenoviral capsid which stabilizes the group-of-nine hexons which compose the 25 majority of the viral capsid (Stewart (1993)). Based upon study of adenovirus deletion mutants, protein IX initially was thought to be a non-essential component of the adenovirus, although its absence was associated with greater heat lability than observed with wild-type virus 30 (Colby and Shenk (1981)). More recently it was discovered that protein IX is essential for packaging full length viral DNA into capsids and that in the absence of protein IX, only genomes at least 1 kb smaller than wild-type could

be propagated as recombinant viruses (Ghosh-Choudhury et al. (1987)). Given this packaging limitation, protein IX deletions deliberately have not been considered in the design of adenoviral vectors.

5           In this application, reference is made to standard textbooks of molecular biology that contain definitions, methods and means for carrying out basic techniques, encompassed by the present invention. See for example, Sambrook et al. (1989) and the various references  
10 cited therein. This reference and the cited publications are expressly incorporated by reference into this disclosure.

Contrary to what has been known in the art, this invention claims the use of recombinant adenoviruses bearing deletions of the protein IX gene as a means of reducing the risk of wild-type adenovirus contamination in virus preparations for use in diagnostic and therapeutic applications such as gene therapy. As used herein, the term "recombinant" is intended to mean a progeny formed as the result of genetic engineering. These deletions can remove an additional 500 to 700 base pairs of DNA sequence that is present in conventional E1 deleted viruses (smaller, less desirable, deletions of portions of the pIX gene are possible and are included within the scope of this invention) and is available for recombination with the Ad5 sequences integrated in 293 cells. Recombinant adenoviruses based on any group C virus, serotype 1, 2, 5 and 6, are included in this invention. Also encompassed by this invention is a hybrid Ad2/Ad5 based recombinant virus expressing the human p53 cDNA from the adenovirus type 2 major late promoter. This construct was assembled as shown in Figure 1. The resultant virus bears a 5' deletion of adenoviral sequences extending from about nucleotide 357 to 4020 and eliminates the Ela and Elb genes as well as the entire protein IX coding sequence, leaving the

polyadenylation site shared by the E1b and protein IX genes intact for use in terminating transcription of any desired gene. A separate embodiment is shown in Figure 4. Alternatively, the deletion can be extended an additional 5 30 to 40 base pairs without affecting the adjacent gene for protein IVa2, although in that case an exogenous polyadenylation signal is provided to terminate transcription of genes inserted into the recombinant virus. The initial virus constructed with this deletion is easily 10 propagated in 293 cells with no evidence of wild-type viral contamination and directs robust p53 expression from the transcriptional unit inserted at the site of the deletion.

The insert capacity of recombinant viruses bearing the protein IX deletion described above is 15 approximately 2.6 kb. This is sufficient for many genes including the p53 cDNA. Insert capacity can be increased by introducing other deletions into the adenoviral backbone, for example, deletions within early regions 3 or 4 (for review see: Graham and Prevec (1991)). For 20 example, the use of an adenoviral backbone containing a 1.9 kb deletion of non-essential sequence within early region 3. With this additional deletion, the insert capacity of the vector is increased to approximately 4.5 kb, large enough for many larger cDNAs, including that of the 25 retinoblastoma tumor suppressor gene.

A recombinant adenovirus expression vector characterized by the partial or total deletion of the adenoviral protein IX DNA and having a gene encoding a foreign protein, or a functional fragment or mutant thereof 30 is provided by this invention. These vectors are useful for the safe recombinant production of diagnostic and therapeutic polypeptides and proteins, and more importantly, for the introduction of genes in gene therapy. Thus, for example, the adenoviral vector of this invention 35 can contain a foreign gene for the expression of a protein

effective in regulating the cell cycle, such as p53, Rb, or mitosin, or in inducing cell death, such as the conditional suicide gene thymidine kinase. (The latter must be used in conjunction with a thymidine kinase metabolite in order to  
5 be effective). Any expression cassette can be used in the vectors of this invention. An "expression cassette" means a DNA molecule having a transcription promoter/enhancer such as the CMV promotor enhancer, etc., a foreign gene, and in some embodiments defined below, a polyadenylation  
10 signal. As used herein, the term "foreign gene" is intended to mean a DNA molecule not present in the exact orientation and position as the counterpart DNA molecule found in wild-type adenovirus. The foreign gene is a DNA molecule up to 4.5 kilobases. "Expression vector" means a  
15 vector that results in the expression of inserted DNA sequences when propagated in a suitable host cell, i.e., the protein or polypeptide coded for by the DNA is synthesized by the host's system. The recombinant adenovirus expression vector can contain part of the gene  
20 encoding adenovirus protein IX, provided that biologically active protein IX or fragment thereof is not produced. Example of this vector are an expression vector having the restriction enzyme map of Figures 1 or 4.

Inducible promoters also can be used in the  
25 adenoviral vector of this invention. These promoters will initiate transcription only in the presence of an additional molecule. Examples of inducible promoters include those obtainable from a  $\beta$ -interferon gene, a heat shock gene, a metallothioneine gene or those obtainable from  
30 steroid hormone-responsive genes. Tissue specific expression has been well characterized in the field of gene expression and tissue specific and inducible promoters such as these are very well known in the art. These genes are used to regulate the expression of the foreign gene after  
35 it has been introduced into the target cell.

Also provided by this invention is a recombinant adenovirus expression vector, as described above, having less extensive deletions of the protein IX gene sequence extending from 3500 bp from the 5' viral termini to 5 approximately 4000 bp, in one embodiment. In a separate embodiment, the recombinant adenovirus expression vector can have a further deletion of a non-essential DNA sequence in adenovirus early region 3 and/or 4 and/or deletion of the DNA sequences designated adenovirus Ela and Elb. In 10 this embodiment, foreign gene is a DNA molecule of a size up to 4.5 kilobases.

A further embodiment has a deletion of up to forty nucleotides positioned 3' to the Ela and Elb deletion and pIX and a foreign DNA molecule encoding a 15 polyadenylation signal inserted into the recombinant vector in a position relative to the foreign gene to regulate the expression of the foreign gene.

For the purposes of this invention, the recombinant adenovirus expression vector can be derived 20 from wild-type group adenovirus, serotype 1, 2, 5 or 6.

In one embodiment, the recombinant adenovirus expression vector has a foreign gene coding for a functional tumor suppressor protein, or a biologically active fragment thereof. As used herein, the term 25 "functional" as it relates to a tumor suppressor gene, refers to tumor suppressor genes that encode tumor suppressor proteins that effectively inhibit a cell from behaving as a tumor cell. Functional genes can include, for instance, wild type of normal genes and modifications 30 of normal genes that retains its ability to encode effective tumor suppressor proteins and other anti-tumor genes such as a conditional suicide protein or a toxin.

Similarly, "non-functional" as used herein is synonymous with "inactivated." Non-functional or defective genes can be caused by a variety of events, including for example point mutations, deletions, methylation and others known to those skilled in the art.

As used herein, an "active fragment" of a gene includes smaller portions of the gene that retain the ability to encode proteins having tumor suppressing activity. p56<sup>RB</sup>, described more fully below, is but one example of an active fragment of a functional tumor suppressor gene. Modifications of tumor suppressor genes are also contemplated within the meaning of an active fragment, such as additions, deletions or substitutions, as long as the functional activity of the unmodified gene is retained.

Another example of a tumor suppressor gene is retinoblastoma (RB). The complete RB cDNA nucleotide sequences and predicted amino acid sequences of the resulting RB protein (designated p110<sup>RB</sup>) are shown in Lee et al. (1987) and in Figure 3. Also useful to express retinoblastoma tumor suppressor protein is a DNA molecule encoding the amino acid sequence shown in Figure 2 or having the DNA sequence shown in Figure 3. A truncated version of p110<sup>RB</sup>, called p56<sup>RB</sup> also is useful. For the sequence of p56<sup>RB</sup>, see Huang et al. (1991). Additional tumor suppressor genes can be used in the vectors of this invention. For illustration purposes only, these can be p16 protein (Kamb et al. (1994)), p21 protein, Wilm's tumor WT1 protein, mitosin, h-NUC, or colon carcinoma DCC protein. Mitosin is described in X. Zhu and W-H Lee, U.S. Application Serial No. 08/141,239, filed October 22, 1993, and a subsequent continuation-in-part by the same inventors, attorney docket number P-CJ 1191, filed October 24, 1994, both of which are herein incorporated by reference. Similarly, h-NUC is described by W-H Lee and P-

L Chen, U.S. Application Serial No. 08/170,586, filed December 20, 1993, herein incorporated by reference.

As is known to those of skill in the art, the term "protein" means a linear polymer of amino acids joined 5 in a specific sequence by peptide bonds. As used herein, the term "amino acid" refers to either the D or L stereoisomer form of the amino acid, unless otherwise specifically designated. Also encompassed within the scope 10 of this invention are equivalent proteins or equivalent peptides, e.g., having the biological activity of purified wild type tumor suppressor protein. "Equivalent proteins" and "equivalent polypeptides" refer to compounds that depart from the linear sequence of the naturally occurring 15 proteins or polypeptides, but which have amino acid substitutions that do not change its biologically activity. These equivalents can differ from the native sequences by the replacement of one or more amino acids with related 20 amino acids, for example, similarly charged amino acids, or the substitution or modification of side chains or functional groups.

Also encompassed within the definition of a functional tumor suppressor protein is any protein whose presence reduces the tumorigenicity, malignancy or hyperproliferative phenotype of the host cell. Examples of 25 tumor suppressor proteins within this definition include, but are not limited to p110<sup>RB</sup>, p56<sup>RB</sup>, mitosin, h-NUC and p53. "Tumorigenicity" is intended to mean having the ability to form tumors or capable of causing tumor formation and is synonymous with neoplastic growth. "Malignancy" is 30 intended to describe a tumorigenic cell having the ability to metastasize and endanger the life of the host organism. "Hyperproliferative phenotype" is intended to describe a cell growing and dividing at a rate beyond the normal limitations of growth for that cell type. "Neoplastic" 35 also is intended to include cells lacking endogenous

functional tumor suppressor protein or the inability of the cell to express endogenous nucleic acid encoding a functional tumor suppressor protein.

An example of a vector of this invention is a  
5 recombinant adenovirus expression vector having a foreign gene coding for p53 protein or an active fragment thereof is provided by this invention. The coding sequence of the p53 gene is set forth below in Table I.

20

TABLE 1

50

V\*SHR PGSR\* LLGSG DTLRS GWERA FHDGD TLPWI GSQTA FRVTA MEEPQ  
100

5 SDPSV EPPLS QETFS DLWKL LPENN VLSPL PSQAM DDMLM SPDDI EQWFT  
150

EDPGP DEAPR MPEAA PPVAP APAAP TPAAP APAPS WPLSS SVPSQ KTYQG  
200

SYGFR LGFLH SGTAK SVTCT YSPAL NKMFC QLAKT CPVQL WVDST PPPGT  
250

10 VRAM AIYKQ SQHMT EVVRR CPHHE RCSDS DGLAP PQHLI RVEGN LRVEY  
300

LDDRN TFRHS VVVPY EPPEV GSDCT TIHYN YMCNS SCMGG MNRRP ILTII  
350

15 TLEDS SGNLL GRNSF EVRVC ACPGR DR RTE EENLR KKGE P HHELP PGSTK  
400

RALPN NTSSS PQPKK KPLDG EYFTL QIRGR ERFEM FRELN EAEL KDAQA

GKEPG GSRAH SSHLK SKKGQ STSRH KKLMF KTEGP DSD\*

\* = Stop codon

20 Any of the expression vectors described herein  
are useful as compositions for diagnosis or therapy. The  
vectors can be used for screening which of many tumor  
suppressor genes would be useful in gene therapy. For  
example, a sample of cells suspected of being neoplastic  
25 can be removed from a subject and mammal. The cells can  
then be contacted, under suitable conditions and with an  
effective amount of a recombinant vector of this invention  
having inserted therein a foreign gene encoding one of  
several functional tumor suppressor genes. Whether the  
30 introduction of this gene will reverse the malignant  
phenotype can be measured by colony formation in soft agar  
or tumor formation in nude mice. If the malignant  
phenotype is reversed, then that foreign gene is determined  
to be a positive candidate for successful gene therapy for  
35 the subject or mammal. When used pharmaceutically, they

can be combined with one or more pharmaceutically acceptable carriers. Pharmaceutically acceptable carriers are well known in the art and include aqueous solutions such as physiologically buffered saline or other solvents 5 or vehicles such as glycols, glycerol, vegetable oils (eg., olive oil) or injectable organic esters. A pharmaceutically acceptable carrier can be used to administer the instant compositions to a cell *in vitro* or to a subject *in vivo*.

10           A pharmaceutically acceptable carrier can contain a physiologically acceptable compound that acts, for example, to stabilize the composition or to increase or decrease the absorption of the agent. A physiologically acceptable compound can include, for example, 15 carbohydrates, such as glucose, sucrose or dextrans, antioxidants, such as ascorbic acid or glutathione, chelating agents, low molecular weight proteins or other stabilizers or excipients. Other physiologically acceptable compounds include wetting agents, emulsifying 20 agents, dispersing agents or preservatives, which are particularly useful for preventing the growth or action of microorganisms. Various preservatives are well known and include, for example, phenol and ascorbic acid. One skilled in the art would know that the choice of a 25 pharmaceutically acceptable carrier, including a physiologically acceptable compound, depends, for example, on the route of administration of the polypeptide and on the particular physio-chemical characteristics of the specific polypeptide. For example, a physiologically 30 acceptable compound such as aluminum monostearate or gelatin is particularly useful as a delaying agent, which prolongs the rate of absorption of a pharmaceutical composition administered to a subject. Further examples of carriers, stabilizers or adjuvants can be found in Martin, 35 Remington's Pharm. Sci., 15th Ed. (Mack Publ. Co., Easton, 1975), incorporated herein by reference. The

pharmaceutical composition also can be incorporated, if desired, into liposomes, microspheres or other polymer matrices (Gregoriadis, Liposome Technology, Vol. 1 (CRC Press, Boca Raton, Florida 1984), which is incorporated 5 herein by reference). Liposomes, for example, which consist of phospholipids or other lipids, are nontoxic, physiologically acceptable and metabolizable carriers that are relatively simple to make and administer.

As used herein, "pharmaceutical composition" 10 refers to any of the compositions of matte described herein in combination with one or more of the above pharmaceutically acceptable carriers. The compositions can then be administered therapeutically or prophylactically. They can be contacted with the host cell *in vivo*, *ex vivo*, 15 or *in vitro*, in an effective amount. *In vitro* and *ex vivo* means of contacting host cells are provided below. When practiced *in vivo*, methods of administering a pharmaceutical containing the vector of this invention, are well known in the art and include but are not limited to, 20 administration orally, intra-tumorally, intravenously, intramuscularly or intraperitoneal. Administration can be effected continuously or intermittently and will vary with the subject and the condition to be treated, e.g., as is the case with other therapeutic compositions (Landmann et 25 al. (1992); Aulitzky et al. (1991); Lantz et al. (1990); Supersaxo et al. (1988); Demetri et al. (1989); and LeMaistre et al. (1991)).

Further provided by this invention is a transformed procaryotic or eucaryotic host cell, for 30 example an animal cell or mammalian cell, having inserted a recombinant adenovirus expression vector described above. Suitable procaryotic cells include but are not limited to bacterial cells such as *E. coli* cells. Methods of transforming host cells with retroviral vectors are known 35 in the art, see Sambrook et al. (1989) and include, but are

not limited to transfection, electroporation, and microinjection.

As used throughout this application, the term animal is intended to be synonymous with mammal and is to include, but not be limited to bovine, porcine, feline, simian, canine, equine, murine, rat or human. Additional host cells include but are not limited to any neoplastic or tumor cell, such as osteosarcoma, ovarian carcinoma, breast carcinoma, melanoma, hepatocarcinoma, lung cancer, brain cancer, colorectal cancer, hematopoietic cell, prostate cancer, cervical carcinoma, retinoblastoma, esophageal carcinoma, bladder cancer, neuroblastoma, or renal cancer.

Additionally, any eucaryotic cell line capable of expressing Ela and Elb or Ela, Elb and pIX is a suitable host for this vector. In one embodiment, a suitable eucaryotic host cell is the 293 cell line available from the American Type Culture Collection, 12301 Parklawn Drive, Rockville, Maryland, U.S.A. 20231.

Any of the transformed host cells described herein are useful as compositions for diagnosis or therapy. When used pharmaceutically, they can be combined with various pharmaceutically acceptable carriers. Suitable pharmaceutically acceptable carriers are well known to those of skill in the art and, for example, are described above. The compositions can then be administered therapeutically or prophylactically, in effective amounts, described in more detail below.

A method of transforming a host cell also is provided by this invention. This method provides contacting a host cell, i.e., a procaryotic or eucaryotic host cell, with any of the expression vectors described herein and under suitable conditions. Host cells transformed by this method also are claimed within the

scope of this invention. The contacting can be effected *in vitro*, *in vivo*, or *ex vivo*, using methods well known in the art (Sambrook et al. (1989)) and using effective amounts of the expression vectors. Also provided in this invention is 5 a method of producing a recombinant protein or polypeptide by growing the transformed host cell under suitable conditions favoring the transcription and translation of the inserted foreign gene. Methods of recombinant expression in a variety of host cells, such as mammalian, 10 yeast, insect or bacterial cells, are widely known, including those described in Sambrook et al., supra. The translated foreign gene can then be isolated by convention means, such as column purification or purification using an anti-protein antibody. The isolated protein or polypeptide 15 also is intended within the scope of this invention. As used herein, purified or isolated mean substantially free of native proteins or nucleic acids normally associated with the protein or polypeptide in the native or host cell environment.

20 Also provided by this invention are non-human animals having inserted therein the expression vectors or transformed host cells of this invention. These "transgenic" animals are made using methods well known to those of skill in the art, for example as described in U.S. 25 Patent No. 5,175,384 or by conventional *ex vivo* therapy techniques, as described in Culver et al. (1991).

As shown in detail below, the recombinant adenoviruses expressing a tumor suppressor wild-type p53, as described above, can efficiently inhibit DNA synthesis 30 and suppress the growth of a broad range of human tumor cell types, including clinical targets. Furthermore, recombinant adenoviruses can express tumor suppression genes such as p53 in an *in vivo* established tumor without relying on direct injection into the tumor or prior *ex vivo* 35 treatment of the cancer cells. The p53 expressed is

functional and effectively suppresses tumor growth *in vivo* and significantly increases survival time in a nude mouse model of human lung cancer.

Thus, the vectors of this invention are particularly suited for gene therapy. Accordingly, methods of gene therapy utilizing these vectors are within the scope of this invention. The vector is purified and then an effective amount is administered *in vivo* or *ex vivo* into the subject. Methods of gene therapy are well known in the art, see, for example, Larrick, J.W. and Burck, K.L. (1991) and Kreigler, M. (1990). "Subject" means any animal, mammal, rat, murine, bovine, porcine, equine, canine, feline or human patient. When the foreign gene codes for a tumor suppressor gene or other anti-tumor protein, the vector is useful to treat or reduce hyperproliferative cells in a subject, to inhibit tumor proliferation in a subject or to ameliorate a particular related pathology. Pathologic hyperproliferative cells are characteristic of the following disease states, thyroid hyperplasia - Grave's Disease, psoriasis, benign prostatic hypertrophy, Li-Fraumeni syndrome including breast cancer, sarcomas and other neoplasms, bladder cancer, colon cancer, lung cancer, various leukemias and lymphomas. Examples of non-pathologic hyperproliferative cells are found, for instance, in mammary ductal epithelial cells during development of lactation and also in cells associated with wound repair. Pathologic hyperproliferative cells characteristically exhibit loss of contact inhibition and a decline in their ability to selectively adhere which implies a change in the surface properties of the cell and a further breakdown in intercellular communication. These changes include stimulation to divide and the ability to secrete proteolytic enzymes.

Moreover, the present invention relates to a method for depleting a suitable sample of pathologic

mammalian hyperproliferative cells contaminating hematopoietic precursors during bone marrow reconstitution via the introduction of a wild type tumor suppressor gene into the cell preparation using the vector of this 5 invention (whether derived from autologous peripheral blood or bone marrow). As used herein, a "suitable sample" is defined as a heterogeneous cell preparation obtained from a patient, e.g., a mixed population of cells containing both phenotypically normal and pathogenic cells.

10 "Administer" includes, but is not limited to introducing into the cell or subject intravenously, by direct injection into the tumor, by intra-tumoral injection, by intraperitoneal administration, by aerosol administration to the lung or topically. Such administration can be 15 combined with a pharmaceutically-accepted carrier, described above.

The term "reduced tumorigenicity" is intended to mean tumor cells that have been converted into less tumorigenic or non-tumorigenic cells. Cells with reduced 20 tumorigenicity either form no tumors *in vivo* or have an extended lag time of weeks to months before the appearance of *in vivo* tumor growth and/or slower growing three dimensional tumor mass compared to tumors having fully inactivated or non-functional tumor suppressor gene.

25 As used herein, the term "effective amount" is intended to mean the amount of vector or anti-cancer protein which achieves a positive outcome on controlling cell proliferation. For example, one dose contains from about  $10^8$  to about  $10^{13}$  infectious units. A typical course 30 of treatment would be one such dose a day over a period of five days. An effective amount will vary on the pathology or condition to be treated, by the patient and his status, and other factors well known to those of skill in the art. Effective amounts are easily determined by those of skill 35 in the art.

Also within the scope of this invention is a method of ameliorating a pathology characterized by hyperproliferative cells or genetic defect in a subject by administering to the subject an effective amount of a vector described above containing a foreign gene encoding a gene product having the ability to ameliorate the pathology, under suitable conditions. As used herein, the term "genetic defect" means any disease or abnormality that results from inherited factors, such as sickle cell anemia 10 or Tay-Sachs disease.

This invention also provides a method for reducing the proliferation of tumor cells in a subject by introducing into the tumor mass an effective amount of an adenoviral expression vector containing an anti-tumor gene 15 other than a tumor suppressor gene. The anti-tumor gene can encode, for example, thymidine kinase (TK). The subject is then administered an effective amount of a therapeutic agent, which in the presence of the anti-tumor gene is toxic to the cell. In the specific case of 20 thymidine kinase, the therapeutic agent is a thymidine kinase metabolite such as ganciclovir (GCV), 6-methoxypurine arabinonucleoside (araM), or a functional equivalent thereof. Both the thymidine kinase gene and the thymidine kinase metabolite must be used concurrently to be 25 toxic to the host cell. However, in its presence, GCV is phosphorylated and becomes a potent inhibitor of DNA synthesis whereas araM gets converted to the cytotoxic anabolite araATP. Other anti-tumor genes can be used as well in combination with the corresponding therapeutic 30 agent to reduce the proliferation of tumor cells. Such other gene and therapeutic agent combinations are known by one skilled in the art. Another example would be the vector of this invention expressing the enzyme cytosine deaminase. Such vector would be used in conjunction with 35 administration of the drug 5-fluorouracil (Austin and Huber, 1993), or the recently described E. Coli Deo  $\Delta$  gene

in combination with 6-methyl-purine-2'-deosribonucleoside (Sorscher et al 1994).

As with the use of the tumor suppressor genes described previously, the use of other anti-tumor genes, 5 either alone or in combination with the appropriate therapeutic agent provides a treatment for the uncontrolled cell growth or proliferation characteristic of tumors and malignancies. Thus, this invention provides a therapy to stop the uncontrolled cellular growth in the patient 10 thereby alleviating the symptoms of the disease or cachexia present in the patient. The effect of this treatment includes, but is not limited to, prolonged survival time of the patient, reduction in tumor mass or burden, apoptosis of tumor cells or the reduction of the number of 15 circulating tumor cells. Means of quantifying the beneficial effects of this therapy are well known to those of skill in the art.

The invention provides a recombinant adenovirus expression vector characterized by the partial or total 20 deletion of the adenoviral protein IX DNA and having a foreign gene encoding a foreign protein, wherein the foreign protein is a suicide gene or functional equivalent thereof. The anti-cancer gene TK, described above, is an example of a suicide gene because when expressed, the gene 25 product is, or can be made to be lethal to the cell. For TK, lethality is induced in the presence of GCV. The TK gene is derived from herpes simplex virus by methods well known to those of skill in the art. The plasmid pMLBTK in E. coli HB101 (from ATCC #39369) is a source of the herpes 30 simplex virus (HSV-1) thymidine kinase (TK) gene for use in this invention. However, many other sources exist as well.

The TK gene can be introduced into the tumor mass by combining the adenoviral expression vector with a

suitable pharmaceutically acceptable carrier. Introduction can be accomplished by, for example, direct injection of the recombinant adenovirus into the tumor mass. For the specific case of a cancer such as hepatocellular carcinoma 5 (HCC), direct injection into the hepatic artery can be used for delivery because most HCCs derive their circulation from this artery. To control proliferation of the tumor, cell death is induced by treating the patients with a TK metabolite such as ganciclovir to achieve reduction of 10 tumor mass. The TK metabolite can be administered, for example, systemically, by local inoculation into the tumor or in the specific case of HCC, by injection into the hepatic artery. The TK metabolite is preferably administered at least once daily but can be increased or 15 decreased according to the need. The TK metabolite can be administered simultaneous or subsequent to the administration of the TK containing vector. Those skilled in the art know or can determine the dose and duration which is therapeutically effective.

20 A method of tumor-specific delivery of a tumor suppressor gene is accomplished by contacting target tissue in an animal with an effective amount of the recombinant adenoviral expression vector of this invention. The gene is intended to code for an anti-tumor agent, such as a 25 functional tumor suppressor gene or suicide gene. "Contacting" is intended to encompass any delivery method for the efficient transfer of the vector, such as intra-tumoral injection.

30 The use of the adenoviral vector of this invention to prepare medicaments for the treatment of a disease or for therapy is further provided by this invention.

The following examples are intended to illustrate, not limit the scope of this invention.

## EXPERIMENT NO. I

Plasmid pAd/MLP/p53/E1b- was used as the starting material for these manipulations. This plasmid is based on the pBR322 derivative pML2 (pBR322 deleted for base pairs 5 1140 to 2490) and contains adenovirus type 5 sequences extending from base pair 1 to base pair 5788 except that it is deleted for adenovirus type 5 base pairs 357 to 3327. At the site of the Ad5 357/3327 deletion a transcriptional unit is inserted which is comprised of the adenovirus type 10 2 major late promoter, the adenovirus type 2 tripartite leader cDNA and the human p53 cDNA. It is a typical E1 replacement vector deleted for the Ad5 E1a and E1b genes but containing the Ad5 protein IX gene (for review of Adenovirus vectors see: Graham and Prevec (1992)). Ad2 15 DNA was obtained from Gibco BRL. Restriction endonucleases and T4 DNA ligase were obtained from New England Biolabs. *E. coli* DH5 $\alpha$  competent cells were purchased from Gibco BRL and 293 cells were obtained from the American Type Culture Collection (ATCC). Prep-A-Gene DNA purification resin was 20 obtained from BioRad. LB broth bacterial growth medium was obtained from Difco. Qiagen DNA purification columns were obtained from Qiagen, Inc. Ad5 dl327 was obtained from R.J. Schneider, NYU. The MBS DNA transfection kit was purchased from Stratagene.

25 One (1)  $\mu$ g pAd/MLP/p53/E1b- was digested with 20 units each of restriction enzymes EcoI 136II and NgoMI according to the manufacturer's recommendations. Five (5)  $\mu$ g Ad2 DNA was digested with 20 units each of restriction endonucleases DraI and NgoMI according to the 30 manufacturer's recommendations. The restriction digestions were loaded into separate lanes of a 0.8% agarose gel and electrophoresed at 100 volts for 2 hours. The 4268 bp restriction fragment from the Pad/MLP/p53/E1b- sample and the 6437 bp fragment from the Ad2 sample were isolated from 35 the gel using Prep-A-Gene DNA extraction resin according to

the manufacturer's specifications. The restriction fragments were mixed and treated with T4 DNA ligase in a total volume of 50  $\mu$ l at 16°C for 16 hours according to the manufacturer's recommendations. Following ligation 5  $\mu$ l of 5 the reaction was used to transform *E. coli* DH5 $\alpha$  cells to ampicillin resistance following the manufacturer's procedure. Six bacterial colonies resulting from this procedure were used to inoculate separate 2 ml cultures of LB growth medium and incubated overnight at 37°C with 10 shaking. DNA was prepared from each bacterial culture using standard procedures (Sambrook et al. (1989)). One fourth of the plasmid DNA from each isolate was digested with 20 units of restriction endonuclease XbaI to screen for the correct recombinant containing XbaI restriction 15 fragments of 3627, 3167, 2466 and 1445 base pairs. Five of six screened isolates contained the correct plasmid. One of these was then used to inoculate a 1 liter culture of LB medium for isolation of large quantities of plasmid DNA. Following overnight incubation plasmid DNA was isolated 20 from the 1 liter culture using Qiagen DNA purification columns according to the manufacturer's recommendations. The resulting plasmid was designated Pad/MLP/p53/PIX-. Samples of this plasmid were deposited with the American Type Culture Collection, 12301 Parklawn Drive, Rockville, 25 Maryland, U.S.A., 12301, on October 22, 1993. The deposit was made under the provisions of the Budapest Treaty on the International Deposit of Microorganisms for the Purpose of Patent Procedure. The deposit was accorded ATCC Accession No. 75576.

30 To construct a recombinant adenovirus, 10  $\mu$ g Pad/MLP/p53/PIX- were treated with 40 units of restriction endonuclease EcoRI to linearize the plasmid. Adenovirus type 5 dl327 DNA (Thimmappaya (1982)) was digested with restriction endonuclease ClaI and the large fragment 35 (approximately 33 kilobase pairs) was purified by sucrose gradient centrifugation. Ten (10)  $\mu$ g of EcoRI treated

Pad/MLP/p53/E1b- and 2.5 µg of ClaI treated Ad5 dl327 were mixed and used to transfect approximately 10<sup>6</sup> 293 cells using the MBS mammalian transfection kit as recommended by the supplier. Eight (8) days following the transfection 5 the 293 cells were split 1 to 3 into fresh media and two days following this adenovirus induced cytopathic effect became evident on the transfected cells. At 13 days post-transfection DNA was prepared from the infected cells using standard procedures (Graham and Prevec (1991)) and analyzed 10 by restriction digestion with restriction endonuclease XhoI. Virus directed expression of p53 was verified following infection of Saos2 osteosarcoma cells with viral lysate and immunoblotting with an anti-p53 monoclonal antibody designated 1801 (Novocasta Lab. Ltd., U.K.).

## 15

## EXPERIMENT NO. II

MATERIALS AND METHODS

## Cell Lines

Recombinant adenoviruses were grown and propagated in the human embryonal kidney cell line 293 20 (ATCC CRL 1573) maintained in DME medium containing 10% defined, supplemented calf serum (Hyclone). Saos-2 cells were maintained in Kaighn's media supplemented with 15% fetal calf serum. HeLa and Hep 3B cells were maintained in DME medium supplemented with 10% fetal calf serum. All 25 other cell lines were grown in Kaighn's media supplemented with 10% fetal calf serum. Saos-2 cells were kindly provided by Dr. Eric Stanbridge. All other cell lines were obtained from ATCC.

## Construction of Recombinant Adenoviruses

30 To construct the Ad5/p53 viruses, a 1.4 kb HindIII-SmaI fragment containing the full length cDNA for

p53 (Table I) was isolated from pGEM1-p53-B-T (kindly supplied by Dr. Wen Hwa Lee) and inserted into the multiple cloning site of the expression vector pSP72 (Promega) using standard cloning procedures (Sambrook et al. (1989)). The 5 p53 insert was recovered from this vector following digestion with XhoI-BglII and gel electrophoresis. The p53 coding sequence was then inserted into either pNL3C or pNL3CMV adenovirus gene transfer vectors (kindly provided by Dr. Robert Schneider) which contain the Ad5 5' inverted 10 terminal repeat and viral packaging signals and the E1a enhancer upstream of either the Ad2 major late promoter (MLP) or the human cytomegalovirus immediate early gene promoter (CMV), followed by the tripartite leader CDNA and Ad 5 sequence 3325-5525 bp in a PML2 background. These new 15 constructs replace the E1 region (bp 360-3325) of Ad5 with p53 driven by either the Ad2 MLP (A/M/53) or the human CMV promoter (A/C/53), both followed by the tripartite leader CDNA (see Figure 4). The p53 inserts use the remaining downstream E1b polyadenylation site. Additional MLP and 20 CMV driven p53 recombinants (A/M/N/53, A/C/N/53) were generated which had a further 705 nucleotide deletion of Ad 5 sequence to remove the protein IX (PIX) coding region. As a control, a recombinant adenovirus was generated from the parental PNL3C plasmid without a p53 insert (A/M). A 25 second control consisted of a recombinant adenovirus encoding the beta-galactosidase gene under the control of the CMV promoter (A/C/B-gal). The plasmids were linearized with either Nru I or Eco RI and co-transfected with the large fragment of a Cla I digested Ad 5 d1309 or d1327 30 mutants (Jones and Shenk (1979)) using a Ca/PO<sub>4</sub> transfection kit (Stratagene). Viral plaques were isolated and recombinants identified by both restriction digest analysis and PCR using recombinant specific primers against the tripartite leader CDNA sequence with downstream p53 CDNA 35 sequence. Recombinant virus was further purified by limiting dilution, and virus particles were purified and

titered by standard methods (Graham and van der Erb (1973); Graham and Prevec (1991)).

#### p53 Protein Detection

Saos-2 or Hep 3B cells ( $5 \times 10^5$ ) were infected  
5 with the indicated recombinant adenoviruses for a period of  
24 hours at increasing multiplicities of infection (MOI) of  
plaque forming units of virus/cell. Cells were then washed  
once with PBS and harvested in lysis buffer (50mM Tris-HCl  
Ph 7.5, 250 mM NaCl, 0.1% NP40, 50mM NaF, 5mM EDTA, 10ug/ml  
10 aprotinin, 10 ug/ml leupeptin, and 1mM PMSF). Cellular  
proteins (approximately 30  $\mu$ g) were separated by 10% SDS-  
PAGE and transferred to nitrocellulose. Membranes were  
incubated with  $\alpha$ -p53 antibody PAb 1801 (Novocastro)  
followed by sheep anti-mouse IgG conjugated with  
15 horseradish peroxidase. p53 protein was visualized by  
chemiluminescence (ECL kit, Amersham) on Kodak XAR-5 film.

#### Measurement of DNA Synthesis Rate

Cells ( $5 \times 10^3$ /well) were plated in 96-well titer  
plates (Costar) and allowed to attach overnight (37°C, 7%  
20  $\text{CO}_2$ ). Cells were then infected for 24 hours with purified  
recombinant virus particles at MOIs ranging from 0.3 to 100  
as indicated. Media were changed 24 hours after infection,  
and incubation was continued for a total of 72 hours.  $^3\text{H}$ -  
25 thymidine (Amersham, 1 $\mu$ Ci/well) was added 18 hours prior to  
harvest. Cells were harvested on glass fiber filters and  
levels of incorporated radioactivity were measured in a  
beta scintillation counter.  $^3\text{H}$ -thymidine incorporation was  
expressed as the mean % (+/- SD) of media control and  
plotted versus the MOI.

30 Tumorigenicity in Nude Mice

Approximately  $2.4 \times 10^6$  Saos-2 cells, plated in T225 flasks, were treated with suspension buffer (1% sucrose in PBS) containing either A/M/N/53 or A/M purified virus at an MOI of 3 or 30. Following an overnight infection, cells were injected subcutaneously into the left and right flanks of BALB/c athymic nude mice (4 mice per group). One flank was injected with the A/M/N/53 treated cells, while the contralateral flank was injected with the control A/M treated cells, each mouse serving as its own control. Animals receiving bilateral injection of buffer treated cells served as additional controls. Tumor dimensions (length, width and height) and body weights were then measured twice per week over an 8 week period. Tumor volumes were estimated for each animal assuming a spherical geometry with radius equal to one-half the average of the measured tumor dimensions.

#### Intra-tumoral RNA Analysis

BALB/c athymic nude mice (approximately 5 weeks of age) were injected subcutaneously with  $1 \times 10^7$  H69 small cell lung carcinoma (SCLC) cells in their right flanks. Tumors were allowed to progress for 32 days until they were approximately 25-50 mm<sup>3</sup>. Mice received peritumoral injections of either A/C/53 or A/C/ $\beta$ -gal recombinant adenovirus ( $2 \times 10^9$  plaque forming units (pfu)) into the subcutaneous space beneath the tumor mass. Tumors were excised from the animals 2 and 7 days post adenovirus treatment and rinsed with PBS. Tumor samples were homogenized, and total RNA was isolated using a TriReagent kit (Molecular Research Center, Inc.). PolyA RNA was isolated using the PolyATtract mRNA Isolation System (Promega), and approximately 10 ng of sample was used for RT-PCR determination of recombinant p53 mRNA expression (Wang et al. (1989)). Primers were designed to amplify sequence between the adenovirus tripartite leader CDNA and

the downstream p53 CDNA, ensuring that only recombinant, and not endogenous p53 would be amplified.

#### p53 Gene Therapy of Established Tumors in Nude Mice

Approximately  $1 \times 10^7$  H69 (SCLC) tumor cells in  
5 200 $\mu$ l volumes were injected subcutaneously into female  
BALB/c athymic nude mice. Tumors were allowed to develop  
for 2 weeks, at which point animals were randomized by  
tumor size (N=5/group). Peritumoral injections of either  
10 A/M/N/53 or the control A/M adenovirus ( $2 \times 10^9$   
pfu/injection) or buffer alone (1% sucrose in PBS) were  
administered twice per week for a total of 8 doses/group.  
Tumor dimensions and body weights were measured twice per  
week for 7 weeks, and tumor volume was estimated as  
described previously. Animals were then followed to  
15 observe the effect of treatment on mouse survival.

#### RESULTS

##### Construction of Recombinant p53-Adenovirus

p53 adenoviruses were constructed by replacing a portion of the E1a and E1b region of adenovirus Type 5 with  
20 p53 CDNA under the control of either the Ad2 MLP (A/M/53) or CMV (A/C/53) promoter (schematized in Figure 4). This E1 substitution severely impairs the ability of the recombinant adenoviruses to replicate, restricting their propagation to 293 cells which supply Ad 5 E1 gene products  
25 in *trans* (Graham et al. (1977)). After identification of p53 recombinant adenovirus by both restriction digest and PCR analysis, the entire p53 CDNA sequence from one of the recombinant adenoviruses (A/M/53) was sequenced to verify that it was free of mutations. Following this, purified  
30 preparations of the p53 recombinants were used to infect HeLa cells to assay for the presence of phenotypically wild type adenovirus. HeLa cells, which are non-permissive for

replication of E1-deleted adenovirus, were infected with 1-  
4 x 10<sup>9</sup> infectious units of recombinant adenovirus, cultured  
for 3 weeks, and observed for the appearance of cytopathic  
effect (CPE). Using this assay, recombinant adenovirus  
5 replication or wild type contamination was not detected,  
readily evident by the CPE observed in control cells  
infected with wild type adenovirus at a level of  
sensitivity of approximately 1 in 10<sup>9</sup>.

#### p53 Protein Expression from Recombinant Adenovirus

10 To determine if p53 recombinant adenoviruses  
expressed p53 protein, tumor cell lines which do not  
express endogenous p53 protein were infected. The human  
tumor cell lines Saos-2 (osteosarcoma) and Hep 3B  
(hepatocellular carcinoma) were infected for 24 hours with  
15 the p53 recombinant adenoviruses A/M/53 or A/C/53 at MOIs  
ranging 0.1 to 200 pfu/cell. Western analysis of lysates  
prepared from infected cells demonstrated a dose-dependent  
p53 protein expression in both cell types (Figure 5). Both  
cell lines expressed higher levels of p53 protein following  
20 infection with A/C/53 than with A/M/53 (Figure 3). No p53  
protein was detected in non-infected cells. Levels of  
endogenous wild-type p53 are normally quite low, and nearly  
undetectable by Western analysis of cell extracts (Bartek  
et al. (1991)). It is clear however that wild-type p53  
25 protein levels are easily detectable after infection with  
either A/M/53 or A/C/53 at the lower MOIs (Figure 5),  
suggesting that even low doses of p53 recombinant  
adenoviruses can produce potentially efficacious levels of  
p53.

#### 30 p53 Dependent Morphology Changes

The reintroduction of wild-type p53 into the p53-  
negative osteosarcoma cell line, Saos-2, results in a  
characteristic enlargement and flattening of these normally

spindle-shaped cells (Chen et al. (1990)). Subconfluent Saos-2 cells ( $1 \times 10^5$  cells/10cm plate) were infected at an MOI of 50 with either the A/C/53 or control A/M virus, and incubated at 37°C for 72 hours until uninfected control 5 plates were confluent. At this point, the expected morphological change was evident in the A/C/53 treated plate (Figure 6, panel C) but not in uninfected (Figure 6, panel A) or control virus-infected plates (Figure 6, panel B). This effect was not a function of cell density because 10 a control plate initially seeded at lower density retained normal morphology at 72 hours when its confluence approximated that of the A/C/53 treated plate. Previous results had demonstrated a high level of p53 protein expression at an MOI of 50 in Saos-2 cells (Figure 5A), and 15 these results provided evidence that the p53 protein expressed by these recombinant adenoviruses was biologically active.

#### p53 Inhibition of Cellular DNA Synthesis

To further test the activity of the p53 20 recombinant adenoviruses, their ability to inhibit proliferation of human tumor cells was assayed as measured by the uptake of  $^3\text{H}$ -thymidine. It has previously been shown that introduction of wild-type p53 into cells which do not express endogenous wild-type p53 can arrest the cells at 25 the G<sub>1</sub>/S transition, leading to inhibition of uptake of labeled thymidine into newly synthesized DNA (Baker et al. (1990); Mercer et al. (1990); Diller et al. (1990)). A variety of p53-deficient tumor cell lines were infected with either A/M/N/53, A/C/N/53 or a non-p53 expressing 30 control recombinant adenovirus (A/M). A strong, dose-dependent inhibition of DNA synthesis by both the A/M/N/53 and A/C/N/53 recombinants in 7 out of the 9 different tumor cell lines tested (Figure 7) was observed. Both constructs were able to inhibit DNA synthesis in these human tumor 35 cells, regardless of whether they expressed mutant p53 or

failed to express p53 protein. It also was found that in this assay, the A/C/N/53 construct was consistently more potent than the A/M/N/53. In saos-2 (osteosarcoma) and MDA-MB468 (breast cancer) cells, nearly 100% inhibition of DNA synthesis was achieved with the A/C/N/53 construct at an MOI as low as 10. At doses where inhibition by the control adenovirus is only 10-30%, a 50-100% reduction in DNA synthesis using either p53 recombinant adenovirus was observed. In contrast, no significant p53-specific effect was observed with either construct as compared to control virus in HEP G2 cells (hepatocarcinoma cell line expressing endogenous wild-type p53, Bressac et al. (1990)), nor in the K562 (p53 null) leukemic cell line.

### Tumorigenicity in Nude Mice

In a more stringent test of function for the p53 recombinant adenoviruses, tumor cells were infected *ex vivo* and then injected the cells into nude mice to assess the ability of the recombinants to suppress tumor growth *in vivo*. Saos-2 cells infected with A/M/N/53 or control A/M virus at a MOI of 3 or 30, were injected into opposite flanks of nude mice. Tumor sizes were then measured twice a week over an 8 week period. At the MOI of 30, no tumor growth was observed in the p53-treated flanks in any of the animals, while the control treated tumors continued to grow (Figure 8). The progressive enlargement of the control virus treated tumors were similar to that observed in the buffer treated control animals. A clear difference in tumor growth between the control adenovirus and the p53 recombinant at the MOI of 3, although tumors from 2 out of the 4 p53-treated mice did start to show some growth after approximately 6 weeks. Thus, the A/M/N/53 recombinant adenovirus is able to mediate p53-specific tumor suppression in an *in vivo* environment.

### *In Vivo Expression of Ad/p53*

Although *ex vivo* treatment of cancer cells and subsequent injection into animals provided a critical test of tumor suppression, a more clinically relevant experiment is to determine if injected p53 recombinant adenovirus could infect and express p53 in established tumors *in vivo*. To address this, H69 (SCLC, p53<sup>null</sup>) cells were injected subcutaneously into nude mice, and tumors were allowed to develop for 32 days. At this time, a single injection of 2 x 10<sup>9</sup> pfu of either A/C/53 or A/C/β-gal adenovirus was injected into the peritumoral space surrounding the tumor. Tumors were then excised at either Day 2 or Day 7 following the adenovirus injection, and polyA RNA was isolated from each tumor. RT-PCR, using recombinant-p53 specific

primers, was then used to detect p53 mRNA in the p53 treated tumors (Figure 9, lanes 1,2,4,5). No p53 signal was evident from the tumors excised from the  $\beta$ -gal treated animals (Figure 9, lanes 3 and 6). Amplification with 5 actin primers served as a control for the RT-PCR reaction (Figure 9, lanes 7-9), while a plasmid containing the recombinant-p53 sequence served as a positive control for the recombinant-p53 specific band (Figure 9, lane 10). This experiment demonstrates that a p53 recombinant 10 adenovirus can specifically direct expression of p53 mRNA within established tumors following a single injection into the peritumoral space. It also shows in vivo viral persistence for at least one week following infection with a p53 recombinant adenovirus.

#### 15 In Vivo Efficacy

To address the feasibility of gene therapy of established tumors, a tumor-bearing nude mouse model was used. H69 cells were injected into the subcutaneous space on the right flank of mice, and tumors were allowed to grow 20 for 2 weeks. Mice then received peritumoral injections of buffer or recombinant virus twice weekly for a total of 8 doses. In the mice treated with buffer or control A/M virus, tumors continued to grow rapidly throughout the treatment, whereas those treated with the A/M/N/53 virus 25 grew at a greatly reduced rate (Figure 10A). After cessation of injections, the control treated tumors continued to grow while the p53 treated tumors showed little or no growth for at least one week in the absence of any additional supply of exogenous p53 (Figure 10A). 30 Although control animals treated with buffer alone had accelerated tumor growth as compared to either virus treated group, no significant difference in body weight was found between the three groups during the treatment period. Tumor ulceration in some animals limited the relevance of 35 tumor size measurements after day 42. However, continued

monitoring of the animals to determine survival time demonstrated a survival advantage for the p53-treated animals (Figure 10B). The last of the control adenovirus treated animals died on day 83, while buffer alone treated 5 controls had all expired by day 56. In contrast, all 5 animals treated with the A/M/N/53 continue to survive (day 130 after cell inoculation) (Figure 10B). Together, this data establish a p53-specific effect on both tumor growth and survival time in animals with established p53-deficient 10 tumors.

#### Adenovirus Vectors Expressing p53

Recombinant human adenovirus vectors which are capable of expressing high levels of wild-type p53 protein in a dose dependent manner were constructed. Each vector 15 contains deletions in the Ela and Elb regions which render the virus replication deficient (Challberg and Kelly (1979); Horowitz, (1991)). Of further significance is that these deletions include those sequences encoding the Elb 19 and 55 kd protein. The 19 kd protein is reported to be 20 involved in inhibiting apoptosis (White et al. (1992); Rao et al. (1992)), whereas the 55 kd protein is able to bind wild-type p53 protein (Sarnow et al. (1982); Heuvel et al. (1990)). By deleting these adenoviral sequences, potential 25 inhibitors of p53 function were removed through direct binding to p53 or potential inhibition of p53 mediated apoptosis. Additional constructs were made which have had the remaining 3' Elb sequence, including all protein IX coding sequence, deleted as well. Although this has been reported to reduce the packaging size capacity of 30 adenovirus to approximately 3 kb less than wild-type virus (Ghosh-Choudhury et al. (1987)), these constructs are also deleted in the E3 region so that the A/M/N/53 and A/C/N/53 constructs are well within this size range. By deleting the pIX region, adenoviral sequences homologous to those 35 contained in 293 cells are reduced to approximately 300

base pairs, decreasing the chances of regenerating replication-competent, wild-type adenovirus through recombination. Constructs lacking pIX coding sequence appear to have equal efficacy to those with pIX.

##### 5 p53/Adenovirus Efficacy In Vitro

In concordance with a strong dose dependency for expression of p53 protein in infected cells, a dose-dependent, p53-specific inhibition of tumor cell growth was demonstrated. Cell division, was inhibited and 10 demonstrated by the inhibition of DNA synthesis, in a wide variety of tumor cell types known to lack wild-type p53 protein expression. Bacchetti and Graham (1993) recently reported p53 specific inhibition of DNA synthesis in the ovarian carcinoma cell line SKOV-3 by a p53 recombinant 15 adenovirus in similar experiments. In addition to ovarian carcinoma, additional human tumor cell lines were demonstrated, representative of clinically important human cancers and including lines over-expressing mutant p53 protein, can also be growth inhibited by the p53 20 recombinants of this invention. At MOIs where the A/C/N/53 recombinant is 90-100% effective in inhibiting DNA synthesis in these tumor types, control adenovirus mediated suppression is less than 20%.

Although Feinstein et al. (1992) reported that 25 re-introduction of wild-type p53 could induce differentiation and increase the proportion of cells in G<sub>1</sub> versus S+G<sub>2</sub> for leukemic K562 cells, no p53 specific effect was found in this line. Horvath and Weber (1988) have reported that human peripheral blood lymphocytes are highly 30 nonpermissive to adenovirus infection. In separate experiments, the recombinant significantly infected the non-responding K562 cells with recombinant A/C/β-gal adenovirus, while other cell lines, including the control Hep G2 line and those showing a strong p53 effect, were

readily infectable. Thus, at least part of the variability of efficacy would appear to be due to variability of infection, although other factors may be involved as well.

The results observed with the A/M/N/53 virus in  
5 Figure 8 demonstrates that complete suppression is possible  
in an *in vivo* environment. The resumption of tumor growth  
in 2 out of 4, p53 treated animals at the lower MOI most  
likely resulted from a small percentage of cells not  
initially infected with the p53 recombinant at this dose.  
10 The complete suppression seen with A/M/N/53 at the higher  
dose, however, shows that the ability of tumor growth to  
recover can be overcome.

#### p53/Adenovirus, *In Vivo* Efficacy

Work presented here and by other groups (Chen et  
15 al. (1990); Takahashi et al. (1992)) have shown that human  
tumor cells lacking expression of wild-type p53 can be  
treated *ex vivo* with p53 and result in suppression of tumor  
growth when the treated cells are transferred into an  
animal model. Applicants present the first evidence of  
20 tumor suppressor gene therapy of an *in vivo* established  
tumor, resulting in both suppression of tumor growth and  
increased survival time. In Applicants' system, delivery  
to tumor cells did not rely on direct injection into the  
tumor mass. Rather, p53 recombinant adenovirus was  
25 injected into the peritumoral space, and p53 mRNA  
expression was detected within the tumor. p53 expressed by  
the recombinants was functional and strongly suppressed  
tumor growth as compared to that of control, non-p53  
expressing adenovirus treated tumors. However, both p53  
30 and control virus treated tumor groups showed tumor  
suppression as compared to buffer treated controls. It has  
been demonstrated that local expression of tumor necrosis  
factor (TNF), interferon- $\gamma$ , interleukin (IL)-2, IL-4 or  
IL-7 can lead to T-cell independent transient tumor

suppression in nude mice (Hoch et al. (1992)). Exposure of monocytes to adenovirus virions are also weak inducers of IFN- $\alpha/\beta$  (reviewed in Gooding and Wold (1990)). Therefore, it is not surprising that some tumor suppression in nude 5 mice was observed even with the control adenovirus. This virus mediated tumor suppression was not observed in the ex vivo control virus treated Saos-2 tumor cells described earlier. The p53-specific *in vivo* tumor suppression was dramatically demonstrated by continued monitoring of the 10 animals in Figure 10. The survival time of the p53-treated mice was significantly increased, with 5 out of 5 animals still alive more than 130 days after cell inoculation compared to 0 out of 5 adenovirus control treated animals. The surviving animals still exhibit growing tumors which 15 may reflect cells not initially infected with the p53 recombinant adenovirus. Higher or more frequent dosing schedules may address this. In addition, promoter shutoff (Palmer et al. (1991)) or additional mutations may have rendered these cells resistant to the p53 recombinant 20 adenovirus treatment. For example, mutations in the recently described WAF1 gene, a gene induced by wild-type p53 which subsequently inhibits progression of the cell cycle into S phase, (El-Deiry et al. (1993); Hunter (1993)) could result in a p53-resistant tumor.

## EXPERIMENT NO. III

This Example shows the use of suicide genes and tissue specific expression of such genes in the gene therapy methods described herein. Hepatocellular carcinoma was chosen as the target because it is one of the most 30 common human malignancies affecting man, causing an estimated 1,250,000 deaths per year world-wide. The incidence of this cancer is very high in Southeast Asia and Africa where it is associated with Hepatitis B and C infection and exposure to aflatoxin. Surgery is currently 35 the only treatment which offers the potential for curing

HCC, although less than 20% of patients are considered candidates for resection (Ravoet C. et al., 1993). However, tumors other than hepatocellular carcinoma are equally applicable to the methods of reducing their 5 proliferation described herein.

#### CELL LINES

All cell lines but for the HLF cell line were obtained from the American Type Tissue Culture Collection (ATCC) 12301 Parklawn Drive, Rockville Maryland. ATCC 10 accession numbers are noted in parenthesis. The human embryonal kidney cell line 293 (CRL 1573) was used to generate and propagate the recombinant adenoviruses described herein. They were maintained in DME medium containing 10% defined, supplemented calf serum (Hyclone). 15 The hepatocellular carcinoma cell lines Hep 3B (HB 8064), Hep G2 (HB 8065), and HLF were maintained in DME/F12 medium supplemented with 10% fetal bovine serum, as were the breast carcinoma cell lines MDA-MB468 (HTB 132) and BT-549 (HTB 122). Chang liver cells (CCL 13) were grown in MEM 20 medium supplemented with 10% fetal bovine serum. The HLF cell line was obtained from Drs. T. Morsaki and H. Kitsuki at the Kyushu University School of Medicine in Japan.

#### RECOMBINANT VIRUS CONSTRUCTION

Two adenoviral expression vectors designated 25 herein as ACNTK and AANTK and devoid of protein IX function (depicted in Figure 11) are capable of directing expression of the TK suicide gene within tumor cells. A third adenovirus expression vector designated AANCAT was constructed to further demonstrate the feasibility of 30 specifically targeting gene expression to specific cell types using adenoviral vectors. These adenoviral constructs were assembled as depicted in Figures 11 and 12 and are derivatives of those previously described for the expression of tumor suppressor genes.

For expression of the foreign gene, expression cassettes have been inserted that utilize either the human cytomegalovirus immediate early promoter/enhancer (CMV) (Boshart, M. et al., 1985) or the human alpha-fetoprotein (AFP) enhancer/promoter (Watanable, K. et al., 1987; Nakabayashi, H. et al., 1989) to direct transcription of the TK gene or the chloramphenicol acetyltransferase gene (CAT). The CMV enhancer promoter is capable of directing robust gene expression in a wide variety of cell types while the AFP enhancer/promoter construct restricts expression to hepatocellular carcinoma cells (HCC) which express AFP in about 70-80% of the HCC patient population. In the construct utilizing the CMV promoter/enhancer, the adenovirus type 2 tripartite leader sequence also was inserted to enhance translation of the TK transcript (Berkner, K.L. and Sharp, 1985). In addition to the E1 deletion, both adenovirus vectors are additionally deleted for 1.9 kilobases (kb) of DNA in the viral E3 region. The DNA deleted in the E3 region is non-essential for virus propagation and its deletion increases the insert capacity of the recombinant virus for foreign DNA by an equivalent amount (1.9kb) (Graham and Prevec, 1991).

To demonstrate the specificity of the AFP promoter/enhancer, the virus AANCAT also was constructed where the marker gene chloramphenicol acetyltransferase (CAT) is under the control of the AFP enhancer/promoter. In the ACNTK viral construct, the Ad2 tripartite leader sequence was placed between the CMV promoter/enhancer and the TK gene. The tripartite leader has been reported to enhance translation of linked genes. The E1 substitution impairs the ability of the recombinant viruses to replicate, restricting their propagation to 293 cells which supply the Ad5 E1 gene products in trans (Graham et al., 1977).

Adenoviral Vector ACNTK: The plasmid pMLBTK in E. coli HB101 (from ATCC #39369) was used as the source of the herpes simplex virus (HSV-1) thymidine kinase (TK) gene. TK was excised from this plasmid as a 1.7 kb gene 5 fragment by digestion with the restriction enzymes Bgl II and Pvu II and subcloned into the compatible Bam HI, EcoR V restriction sites of plasmid pSP72 (Promega) using standard cloning techniques (Sambrook et al., 1989). The TK insert was then isolated as a 1.7 kb fragment from this 10 vector by digestion with Xba I and Bgl II and cloned into Xba I, BamHI digested plasmid pACN (Wills et al. 1994). Twenty (20) µg of this plasmid designated pACNTK were linearized with Eco RI and cotransfected into 293 cells (ATCC CRL 1573) with 5 µg of Cla I digested ACBGL (Wills et 15 al., 1994 supra) using a CaPO<sub>4</sub> transfection kit (Stratagene, San Diego, California). Viral plaques were isolated and recombinants, designated ACNTK, were identified by restriction digest analysis of isolated DNA with Xho I and BsiWI. Positive recombinants were further purified by 20 limiting dilution and expanded and titered by standard methods (Graham and Prevec, 1991).

Adenoviral Vector AANTK: The α-fetoprotein promoter (AFP-P) and enhancer (AFP-E) were cloned from a human genomic DNA (Clontech) using PCR amplification with 25 primers containing restriction sites at their ends. The primers used to isolate the 210 bp AFP-E contained a Nhe I restriction site on the 5' primer and an Xba I, Xho I, Kpn I linker on the 3' primer. The 5' primer sequence was 5'-CGC GCT AGC TCT GCC CCA AAG AGC T-3. The 5' primer 30 sequence was 5'-CGC GGT ACC CTC GAG TCT AGA TAT TGC CAG TGG TGG AAG-3'. The primers used to isolate the 1763 bp AFE fragment contained a Not I restriction site on the 5' primer and a Xba I site on the 3' primer. The 5' primer sequence was 5'-CGT GCG GCC GCT GGA GGA CTT TGA GGA TGT CTG 35 TC-3'. The 3' primer sequence was 5'-CGC TCT AGA GAG ACC AGT TAG GAA GTT TTC GCA-3'. For PCR amplification, the DNA

was denatured at 97° for 7 minutes, followed by 5 cycles of amplification at 97°, 1 minute, 53°, 1 minute, 72°, 2 minutes, and a final 72°, 10 minute extension. The amplified AFE was digested with Not I and Xba I and 5 inserted into the Not I, Xba I sites of a plasmid vector (pA/ITR/B) containing adenovirus type 5 sequences 1-350 and 3330 - 5790 separated by a polylinker containing Not I, Xho I, Xba I, Hind III, Kpn I, Bam HI, Nco I, Sma I, and Bgl II sites. The amplified AFP-E was digested with Nhe I and Kpn 10 I and inserted into the AFP-E containing construct described above which had been digested with Xba I and Kpn I. This new construct was then further digested with Xba I and NgoMI to remove adenoviral sequences 3330 - 5780, which were subsequently replaced with an Xba I, NgoMI 15 restriction fragment of plasmid pACN containing nucleotides 4021 - 10457 of adenovirus type 2 to construct the plasmid pAAN containing both the  $\alpha$ -fetoprotein enhancer and promoter. This construct was then digested with Eco RI and Xba I to isolate a 2.3 kb fragment containing the Ad5 20 inverted terminal repeat, the AFP-E and the AFP-P which was subsequently ligated with the 8.55 kb fragment of Eco RI, Xba I digested pACNTK described above to generate pAANTK where the TK gene is driven by the  $\alpha$ -fetoprotein enhancer and promoter in an adenovirus background. This plasmid was 25 then linearized with Eco RI and cotransfected with the large fragment of Cla I digested ALBGL as above and recombinants, designated AANTK, were isolated and purified as described above.

Adenoviral Vector AANCAT: The chloramphenicol 30 acetyltransferase (CAT) gene was isolated from the pCAT-Basic Vector (Promega Corporation) by an Xba I, Bam HI digest. This 1.64 kb fragment was ligated into Xba I, Bam HI digested pAAN (described above) to create pAANCAT. This plasmid was then linearized with Eco RI and cotransfected 35 with the large fragment of Cla I digested rA/C/ $\beta$ -gal to create AANCAT.

REPORTER GENE EXPRESSION:  $\beta$ -GALACTOSIDASE EXPRESSION:

Cells were plated at  $1 \times 10^5$  cells/well in a 24-well tissue culture plate (Costar) and allowed to adhere overnight (37°C, 7% CO<sub>2</sub>). Overnight infections of ACBGL were 5 performed at a multiplicity of infection (MOI) of 30. After 24 hours, cells were fixed with 3.7% Formaldehyde; PBS, and stained with 1mg/ml Xgal reagent (USB). The data was scored (+,++,++) by estimating the percentage of positively stained cells at each MOI. [+=1-33%, ++=33-67% 10 and +++=>67%]

## REPORTER GENE EXPRESSION: CAT EXPRESSION:

Two (2)  $\times 10^6$  cells (Hep G2, Hep 3B, HLF, Chang, and MDA-MB468) were seeded onto 10 cm plates in triplicate and incubated overnight (37°C, 7% CO<sub>2</sub>). Each plate was then 15 infected with either AANCAT at an MOI = 30 or 100 or uninfected and allowed to incubate for 3 days. The cells were then trypsinized and washed with PBS and resuspended in 100  $\mu$ l of 0.25 M Tris pH 7.8. The samples were frozen and thawed 3 times, and the supernatant was transferred to 20 new tubes and incubated at 60°C for 10 minutes. The samples were then spun at 4°C for 5 minutes, and the supernatants assayed for protein concentration using a Bradford assay (Bio-Rad Protein Assay Kit). Samples were adjusted to equal protein concentrations to a final volume 25 of 75  $\mu$ l using 0.25 M Tris, 25  $\mu$ l of 4mM acetyl CoA and 1  $\mu$ l of <sup>14</sup>C-Chloramphenicol and incubated overnight at 37°C. 500  $\mu$ l of ethyl acetate is added to each sample and mixed by vortexing, followed by centrifugation for 5 minutes at room temperature. The upper phase is then transferred to 30 a new tube and the ethyl acetate is evaporated by centrifugation under vacuum. The reaction products are then redissolved in 25  $\mu$ l of ethyl acetate and spotted onto a thin layer chromatography (TLC) plate and the plate is then placed in a pre-equilibrated TLC chamber (95%

chloroform, 5% methanol). The solvent is then allowed to migrate to the top of the plate, the plate is then dried and exposed to X-ray film.

CELLULAR PROLIFERATION:  $^3\text{H}$ -THYMIDINE INCORPORATION

5           Cells were plated at  $5 \times 10^3$  cells/well in a 96-well micro-titer plate (Costar) and allowed to incubate overnight (37C, 7% CO<sub>2</sub>). Serially diluted ACN, ACNTK or AATK virus in DMEM; 15% FBS; 1% glutamine was used to transfect cells at an infection multiplicity of 30 for an  
10 overnight duration at which point cells were dosed in triplicate with ganciclovir (Cytovene) at log intervals between 0.001 and 100 mM (micro molar). 1  $\mu\text{Ci}$   $^3\text{H}$ -thymidine (Amersham) was added to each well 12-18 hours before harvesting. At 72 hours-post infection cells were  
15 harvested onto glass-fiber filters and incorporated  $^3\text{H}$ -thymidine was counted using liquid scintillation (TopCount, Packard). Results are plotted as percent of untreated control proliferation and tabulated as the effective dose (ED<sub>50</sub>±SD) for a 50 percent reduction in proliferation over  
20 media controls. ED<sub>50</sub> values were estimated by fitting a logistic equation to the dose response data.

CYTOTOXICITY: LDH RELEASE

Cells (HLF, human HCC) were plated, infected with ACN or ACNTK and treated with ganciclovir as described  
25 for the proliferation assay. At 72 hours post-ganciclovir administration, cells were spun, the supernatant was removed. The levels of lactate dehydrogenase measured colometrically (Promega, Cytotox 96™). Mean (+/- S.D.) LDH release is plotted versus M.O.I.

30 IN VIVO THERAPY

Human hepatocellular carcinoma cells (Hep 3B) were injected subcutaneously into ten female (10) athymic nu/nu mice (Simonsen Laboratories, Gilroy, CA). Each animal received approximately  $1 \times 10^7$  cells in the left 5 flank. Tumors were allowed to grow for 27 days before randomizing mice by tumor size. Mice were treated with intratumoral and peritumoral injections of ACNTK or the control virus ACN ( $1 \times 10^9$  iu in 100  $\mu$ l) every other day for a total of three doses. Starting 24 hours after the 10 initial dose of adenovirus, the mice were dosed intraperitoneally with ganciclovir (Cytovene 100 mg/kg) daily for a total of 10 days. Mice were monitored for tumor size and body weight twice weekly. Measurements on tumors were made in three dimensions using vernier calipers 15 and volumes were calculated using the formula  $4/3 \pi r^3$ , where r is one-half the average tumor dimension.

## RESULTS

The recombinant adenoviruses were used to infect three HCC cell lines (HLF, Hep3B and Hep-G2). One human 20 liver cell line (Chang) and two breast cancer cell lines were used as controls (MDAMB468 and BT549). To demonstrate the specificity of the AFP promoter/enhancer, the virus AANCAT was constructed. This virus was used to infect cells that either do (Hep 3B, HepG2) or do not (HLE, 25 Chang, MDAMB468) express the HCC tumor marker alpha-fetoprotein (AFP). As shown in Figure 13, AANCAT directs expression of the CAT marker gene only in those HCC cells which are capable of expressing AFP (Figure 13).

The efficacy of ACNTK and AANTK for the treatment 30 of HCC was assessed using a  $^3$ H-thymidine incorporation assay to measure the effect of the combination of HSV-TK expression and ganciclovir treatment upon cellular proliferation. The cell lines were infected with either ACNTK or AANTK or the control virus ACN (Wills et al., 1994

supra), which does not direct expression of HSV-TK, and then treated with increasing concentrations of ganciclovir. The effect of this treatment was assessed as a function of increasing concentrations of ganciclovir, and the 5 concentration of ganciclovir required to inhibit  $^3\text{H}$ -thymidine incorporated by 50% was determined ( $\text{ED}_{50}$ ). Additionally, a relative measure of adenovirus - mediated gene transfer and expression of each cell line was determined using a control virus which directs expression 10 of the marker gene beta-galactosidase. The data presented in Figure 14 and Table 1 below show that the ACNTK virus/ganciclovir combination treatment was capable of inhibiting cellular proliferation in all cell lines examined as compared with the control adenovirus ACN in 15 combination with ganciclovir. In contrast, the AANTK viral vector was only effective in those HCC cell lines which have been demonstrated to express  $\alpha$ -fetoprotein. In addition, the AANTK/GCV combination was more effective when the cells were plated at high densities.

20

TABLE 1

<u>Cell Line</u>	aFP	$\beta$ -gal Expression	ACN	ED50 ACNTK	AANTK
MDAMB468	-	+++	>100	2	>100
BT549	-	+++	>100	<0.3	>100
25 HLF	-	+++	>100	0.8	>100
CHANG	-	+++	>100	22	>100
HEP-3B	-	+	80	8	8
HEP-G2 LOW	+	++	90	2	35
HEP-G2 HIGH	+	++	89	0.5	4

30

Nude mice bearing Hep3B tumors (N=5/group) were treated intratumorally and peritumorally with equivalent

doses of ACNTK or ACN control. Twenty-four hours after the first administration of recombinant adenovirus, daily treatment of ganciclovir was initiated in all mice. Tumor dimensions from each animal were measured twice weekly via 5 calipers, and average tumor sizes are plotted in Figure 16. Average tumor size at day 58 was smaller in the ACNTK-treated animals but the difference did not reach statistical significance ( $p<0.09$ , unpaired t-test). These data support a specific effect of ACNTK on tumor growth in 10 vivo. No significant differences in average body weight were detected between the groups.

Although the invention has been described with reference to the above embodiments, it should be understood that various modifications can be made without departing 15 from the spirit of the invention. Accordingly, the invention is limited only by the claims that follow.

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What is claimed is:

1. A recombinant adenovirus expression vector comprising a partial or total deletion of a protein IX DNA and a gene encoding a foreign protein.
2. The recombinant adenovirus expression vector of claim 1, wherein the deletion of the protein IX gene sequence extends from about 3500 bp from the 5' viral termini to about 4000 bp from the 5' viral termini.
3. The recombinant adenovirus expression vector of claim 2 further comprising deletion of a non-essential DNA sequence in adenovirus early region 3 and/or early region 4.
4. The recombinant adenovirus expression vector of claim 2 further comprising deletion of a DNA sequences designated adenovirus Ela and Elb.
5. The recombinant adenovirus expression vector of claim 2 further comprising deletion of early region 3 and/or 4 and DNA sequences designated adenovirus Ela and Elb.
6. The recombinant adenovirus expression vector of claim 4 or 5 further comprising a deletion of up to forty nucleotides positioned 3' to the Ela and Elb and protein IX deletion and a foreign DNA molecule encoding a polyadenylation signal.
7. The recombinant adenovirus expression vector of claims 1 to 6, wherein the adenovirus is a Group C adenovirus selected from a serotype 1, 2, 5 or 6.

8. The recombinant adenovirus expression vector of claim 1, wherein the gene is a DNA molecule up to 2.6 kilobases.

9. The recombinant adenovirus expression vector of claim 6, wherein the gene is a DNA molecule up to 4.5 kilobases.

10. The recombinant adenovirus expression vector of claim 1, wherein the gene encodes a foreign functional protein or a biologically active fragment thereof.

11. The recombinant adenovirus expression vector of claim 10, wherein the gene encodes a foreign functional tumor suppressor protein or a biologically active fragment thereof.

12. The recombinant adenovirus expression vector of claim 1, wherein the gene encodes a suicide protein or functional equivalent thereof.

13. A transformed host cell comprising the recombinant adenovirus expression vector of claim 1 or 10.

14. The transformed host cell of claim 13, wherein the host cell is a prokaryotic or eucaryotic cell.

15. A method for transforming a pathologic hyperproliferative mammalian cell comprising contacting the cell with the expression vector of claim 1.

16. A method of treating a pathology in an animal or mammal caused by the absence of a tumor suppressor gene or the presence of a pathologically mutated tumor suppressor gene comprising administering to the 5 animal or mammal an effective amount of the vector of claim 1 containing a gene encoding a foreign functional protein

having a tumor suppressive function, under suitable conditions.

17. The method of claim 16, wherein the foreign protein is a functional tumor suppressor protein.

18. A method of gene therapy comprising administering to a subject an effective amount of the vector of claim 1.

19. A method of inhibiting the proliferation of a tumor in an animal comprising administering an effective amount of the adenoviral expression vector of claim 1 under suitable conditions to the animal.

20. The method of claim 19, wherein the gene encodes an anti-tumor agent.

21. The method of claim 20, wherein the anti-tumor agent is a tumor suppressor gene.

22. The method of claim 20, wherein the anti-tumor agent is a suicide gene or functional equivalent thereof.

23. The method of claim 21, wherein the tumor is non-small cell lung cancer, small cell lung cancer, hepatocarcinoma, melanoma, retinoblastoma, breast tumor, colorectal carcinoma, leukemia, lymphoma, brain tumor,  
5 cervical carcinoma, sarcoma, prostate tumor, bladder tumor, tumor of the reticuloendothelial tissues, Wilm's tumor, astrocytoma, glioblastoma, neuroblastoma, ovarian carcinoma, osteosarcoma, and renal cancer.

24. The method of claim 19, wherein the vector is administered by intra-tumoral injection.

25. A pharmaceutical composition comprising the recombinant adenoviral expression vector of claim 1, 10 or 12.

26. A method for reducing the proliferation of tumor cells in a subject comprising administering under suitable conditions an effective amount of an adenoviral expression vector of claim 12 and an effective amount of a 5 thymidine kinase metabolite or a functional equivalent thereof.

27. The method of claim 26, wherein the thymidine kinase metabolite is ganciclovir or 6-methoxypurine arabinonucleoside or a functional equivalent thereof.

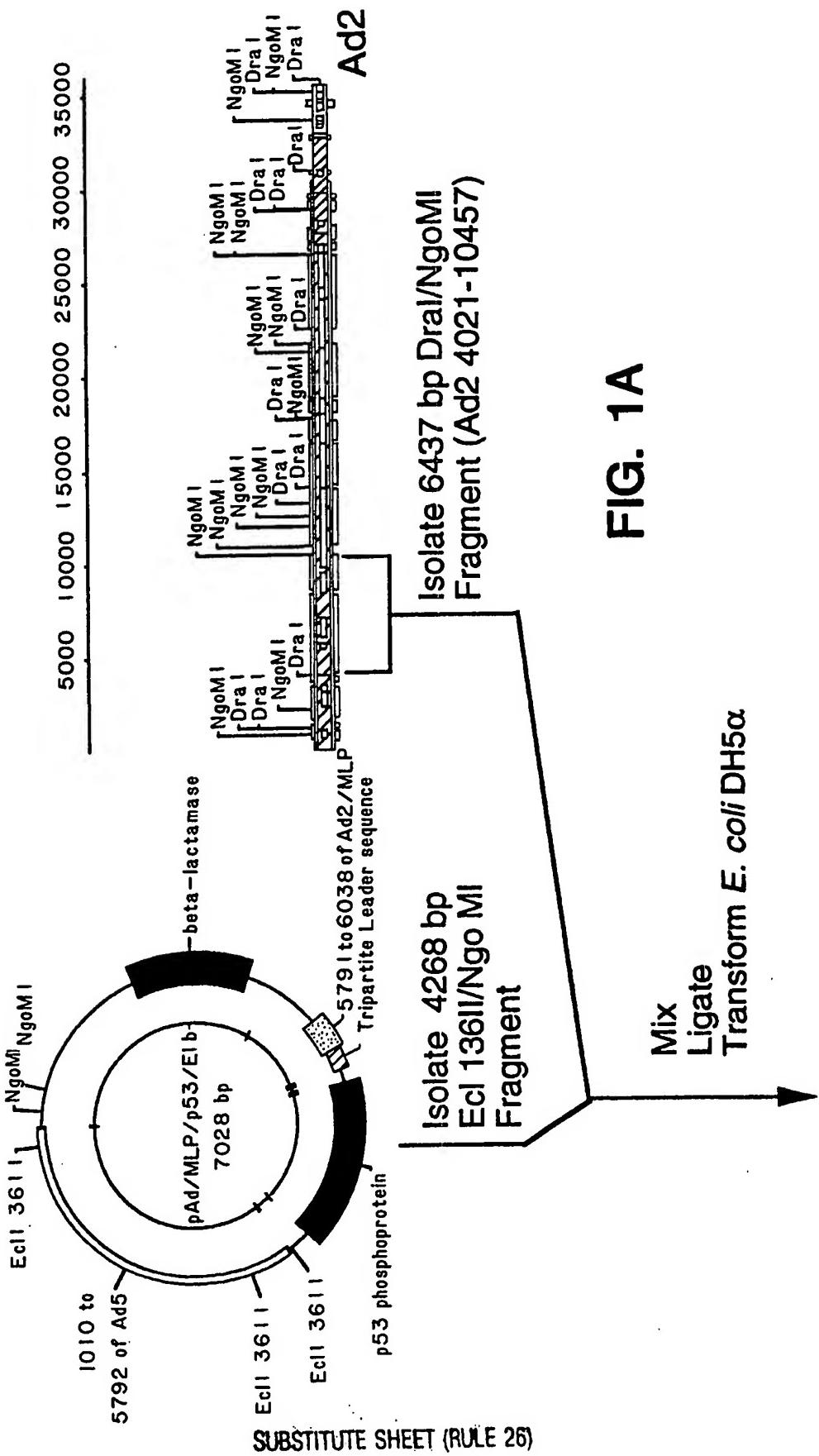
28. The method of claim 26, wherein the adenoviral expression vector is administered by injection into the tumor mass.

29. The method of claim 26, wherein the tumor cells are hepatocellular carcinoma.

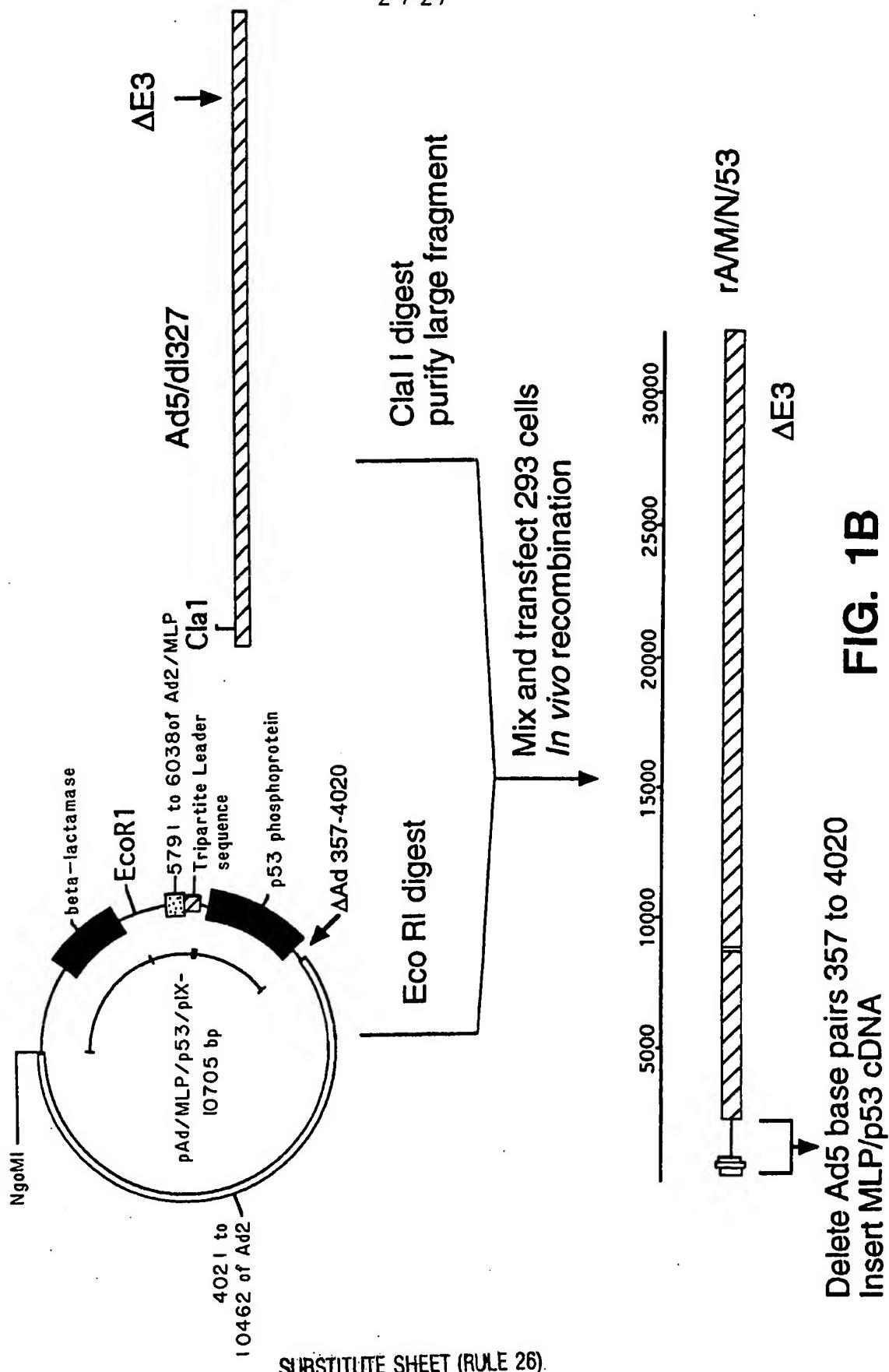
30. The method of claim 29, wherein the adenoviral expression vector is administered directly into the hepatic artery of the subject.

31. A kit for reducing the proliferation of tumor cells comprising the components of the adenoviral expression vector of claim 12, a thymidine kinase metabolite or functional equivalent thereof, pharmaceutical 5 carriers and instructions for the treatment of hepatocellular carcinoma using the kit components.

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SUBSTITUTE SHEET (RULE 26)

**FIG. 1B**

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Met Pro Pro Lys Thr Pro Arg Lys Thr Ala Ala Thr Ala Ala Ala Ala  
 1 5 10 15

Ala Ala Glu Pro Pro Ala Pro Pro Pro Pro Pro Pro Glu Glu Asp  
 20 25 30

Pro Glu Gln Asp Ser Gly Pro Glu Asp Leu Pro Leu Val Arg Leu Glu  
 35 40 45

Phe Glu Glu Thr Glu Glu Pro Asp Phe Thr Ala Leu Cys Gln Lys Leu  
 50 55 60

Lys Ile Pro Asp His Val Arg Glu Arg Ala Trp Leu Thr Trp Glu Lys  
 65 70 75 80

Val Ser Ser Val Asp Gly Val Leu Gly Gly Tyr Ile Gln Lys Lys Lys  
 85 90 95

Glu Leu Trp Gly Ile Cys Ile Phe Ile Ala Ala Val Asp Leu Asp Glu  
 100 105 110

Met Ser Phe Thr Phe Thr Glu Leu Gln Lys Asn Ile Glu Ile Ser Val  
 115 120 125

His Lys Phe Phe Asn Leu Leu Lys Glu Ile Asp Thr Ser Thr Lys Val  
 130 135 140

Asp Asn Ala Met Ser Arg Leu Leu Lys Lys Tyr Asp Val Leu Phe Ala  
 145 150 155 160

Leu Phe Ser Lys Leu Glu Arg Thr Cys Glu Leu Ile Tyr Leu Thr Gln  
 165 170 175

Pro Ser Ser Ser Ile Ser Thr Glu Ile Asn Ser Ala Leu Val Leu Lys  
 180 185 190

Val Ser Trp Ile Thr Phe Leu Leu Ala Lys Gly Glu Val Leu Gln Met  
 195 200 205

Glu Asp Asp Leu Val Ile Ser Phe Gln Leu Met Leu Cys Val Leu Asp  
 210 215 220

Tyr Phe Ile Lys Leu Ser Pro Pro Met Leu Leu Lys Glu Pro Tyr Lys  
 225 230 235 240

Thr Ala Val Ile Pro Ile Asn Gly Ser Pro Arg Thr Pro Arg Arg Gly  
 245 250 255

**FIG. 2A**

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Gln Asn Arg Ser Ala Arg Ile Ala Lys Gln Leu Glu Asn Asp Thr Arg  
260 265 270

Ile Ile Glu Val Leu Cys Lys Glu His Glu Cys Asn Ile Asp Glu Val  
275 280 285

Lys Asn Val Tyr Phe Lys Asn Phe Ile Pro Phe Met Asn Ser Leu Gly  
290 295 300

Leu Val Thr Ser Asn Gly Leu Pro Glu Val Glu Asn Leu Ser Lys Arg  
305 310 315 320

Tyr Glu Glu Ile Tyr Leu Lys Asn Lys Asp Leu Asp Ala Arg Leu Phe  
325 330 335

Leu Asp His Asp Lys Thr Leu Gln Thr Asp Ser Ile Asp Ser Phe Glu  
340 345 350

Thr Gln Arg Thr Pro Arg Lys Ser Asn Leu Asp Glu Glu Val Asn Val  
355 360 365

Ile Pro Pro His Thr Pro Val Arg Thr Val Met Asn Thr Ile Gln Gln  
370 375 380

Leu Met Met Ile Leu Asn Ser Ala Ser Asp Gln Pro Ser Glu Asn Leu  
385 390 395 400

Ile Ser Tyr Phe Asn Asn Cys Thr Val Asn Pro Lys Glu Ser Ile Leu  
405 410 415

Lys Arg Val Lys Asp Ile Gly Tyr Ile Phe Lys Glu Lys Phe Ala Lys  
420 425 430

Ala Val Gly Gln Gly Cys Val Glu Ile Gly Ser Gln Arg Tyr Lys Leu  
435 440 445

Gly Val Arg Leu Tyr Tyr Arg Val Met Glu Ser Met Leu Lys Ser Glu  
450 455 460

Glu Glu Arg Leu Ser Ile Gln Asn Phe Ser Lys Leu Leu Asn Asp Asn  
465 470 475 480

Ile Phe His Met Ser Leu Leu Ala Cys Ala Leu Glu Val Val Met Ala  
485 490 495

Thr Tyr Ser Arg Ser Thr Ser Gln Asn Leu Asp Ser Gly Thr Asp Leu  
500 505 510

**FIG. 2B**

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Ser Phe Pro Trp Ile Leu Asn Val Leu Asn Leu Lys Ala Phe Asp Phe  
 515 520 525  
 Tyr Lys Val Ile Glu Ser Phe Ile Lys Ala Glu Gly Asn Leu Thr Arg  
 530 535 540  
 Glu Met Ile Lys His Leu Glu Arg Cys Glu His Arg Ile Met Glu Ser  
 545 550 555 560  
 Leu Ala Trp Leu Ser Asp Ser Pro Leu Phe Asp Leu Ile Lys Gln Ser  
 565 570 575  
 Lys Asp Arg Glu Gly Pro Thr Asp His Leu Glu Ser Ala Cys Pro Leu  
 580 585 590  
 Asn Leu Pro Leu Gln Asn Asn His Thr Ala Ala Asp Met Tyr Leu Ser  
 595 600 605  
 Pro Val Arg Ser Pro Lys Lys Gly Ser Thr Thr Arg Val Asn Ser  
 610 615 620  
 Thr Ala Asn Ala Glu Thr Gln Ala Thr Ser Ala Phe Gln Thr Gln Lys  
 625 630 635 640  
 Pro Leu Lys Ser Thr Ser Leu Ser Leu Phe Tyr Lys Lys Val Tyr Arg  
 645 650 655  
 Leu Ala Tyr Leu Arg Leu Asn Thr Leu Cys Glu Arg Leu Leu Ser Glu  
 660 665 670  
 His Pro Glu Leu Glu His Ile Ile Trp Thr Leu Phe Gln His Thr Leu  
 675 680 685  
 Gln Asn Glu Tyr Glu Leu Met Arg Asp Arg His Leu Asp Gln Ile Met  
 690 695 700  
 Met Cys Ser Met Tyr Gly Ile Cys Lys Val Lys Asn Ile Asp Leu Lys  
 705 710 715 720  
 Phe Lys Ile Ile Val Thr Ala Tyr Lys Asp Leu Pro His Ala Val Gln  
 725 730 735  
 Glu Thr Phe Lys Arg Val Leu Ile Lys Glu Glu Tyr Asp Ser Ile  
 740 745 750  
 Ile Val Phe Tyr Asn Ser Val Phe Met Gln Arg Leu Lys Thr Asn Ile  
 755 760 765

**FIG. 2C**

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Leu Gln Tyr Ala Ser Thr Arg Pro Pro Thr Leu Ser Pro Ile Pro His  
770 775 780

Ile Pro Arg Ser Pro Tyr Lys Phe Pro Ser Ser Pro Leu Arg Ile Pro  
785 790 795 800

Gly Gly Asn Ile Tyr Ile Ser Pro Leu Lys Ser Pro Tyr Lys Ile Ser  
805 810 815

Glu Gly Leu Pro Thr Pro Thr Lys Met Thr Pro Arg Ser Arg Ile Leu  
820 825 830

Val Ser Ile Gly Glu Ser Phe Gly Thr Ser Glu Lys Phe Gln Lys Ile  
835 840 845

Asn Gln Met Val Cys Asn Ser Asp Arg Val Leu Lys Arg Ser Ala Glu  
850 855 860

Gly Ser Asn Pro Pro Lys Pro Leu Lys Lys Leu Arg Phe Asp Ile Glu  
865 870 875 880

Gly Ser Asp Glu Ala Asp Gly Ser Lys His Leu Pro Gly Glu Ser Lys  
885 890 895

Phe Gln Gln Lys Leu Ala Glu Met Thr Ser Thr Arg Thr Arg Met Gln  
900 905 910

Lys Gln Lys Met Asn Asp Ser Met Asp Thr Ser Asn Lys Glu Glu Lys  
915 920 925

## FIG. 2D

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TTCCGGTTTT TCTCAGGGGA CGTTGAAATT ATTTTGTAACGGGAGTCGG GAGAGGACGG	60
GGCGTGCCTT CCGTGCCTGC CGCGTCGTCTT CCTCCACAGC TCGCTGGCTC	120
CCGCCGCGGA AAGGCGTC ATG CCG CCC AAA ACC CCC CGA AAA ACG GCC GCC Met Pro Pro Lys Thr Pro Arg Lys Thr Ala Ala	171
1 5 10	
ACC GCC GCC GCT GCC GCC GCG GAA CCC CCG GCA CCG CCG CCG CCG CCC Thr Ala Ala Ala Ala Ala Glu Pro Pro Ala Pro Pro Pro Pro Pro	219
15 20 25	
CCT CCT GAG GAG GAC CCA GAG CAG GAC AGC GGC CCG GAG GAC CTG CCT Pro Pro Glu Glu Asp Pro Glu Gln Asp Ser Gly Pro Glu Asp Leu Pro	267
30 35 40	
CTC GTC AGG CTT GAG TTT GAA GAA ACA GAA GAA CCT GAT TTT ACT GCA Leu Val Arg Leu Glu Phe Glu Glu Thr Glu Glu Pro Asp Phe Thr Ala	315
45 50 55	
TTA TGT CAG AAA TTA AAG ATA CCA GAT CAT GTC AGA GAG AGA GCT TGG Leu Cys Gln Lys Leu Lys Ile Pro Asp His Val Arg Glu Arg Ala Trp	363
60 65 70 75	
TTA ACT TGG GAG AAA GTT TCA TCT GTG GAT GGA GTA TTG GGA GGT TAT Leu Thr Trp Glu Lys Val Ser Ser Val Asp Gly Val Leu Gly Gly Tyr	411
80 85 90	
ATT CAA AAG AAA AAG GAA CTG TGG GGA ATC TGT ATC TTT ATT GCA GCA Ile Gln Lys Lys Glu Leu Trp Gly Ile Cys Ile Phe Ile Ala Ala	459
95 100 105	
GTT GAC CTA GAT GAG ATG TCG TTC ACT TTT ACT GAG CTA CAG AAA AAC Val Asp Leu Asp Glu Met Ser Phe Thr Phe Thr Glu Leu Gln Lys Asn	507
110 115 120	
ATA GAA ATC AGT GTC CAT AAA TTC TTT AAC TTA CTA AAA GAA ATT GAT Ile Glu Ile Ser Val His Lys Phe Phe Asn Leu Leu Lys Glu Ile Asp	555
125 130 135	
ACC AGT ACC AAA GTT GAT AAT GCT ATG TCA AGA CTG TTG AAG AAG TAT Thr Ser Thr Lys Val Asp Asn Ala Met Ser Arg Leu Leu Lys Lys Tyr	603
140 145 150 155	
GAT GTA TTG TTT GCA CTC TTC AGC AAA TTG GAA AGG ACA TGT GAA CTT Asp Val Leu Phe Ala Leu Phe Ser Lys Leu Glu Arg Thr Cys Glu Leu	651
160 165 170	
ATA TAT TTG ACA CAA CCC AGC AGT TCG ATA TCT ACT GAA ATA AAT TCT Ile Tyr Leu Thr Gln Pro Ser Ser Ser Ile Ser Thr Glu Ile Asn Ser	699
175 180 185	
GCA TTG GTG CTA AAA GTT TCT TGG ATC ACA TTT TTA TTA GCT AAA GGG Ala Leu Val Leu Lys Val Ser Trp Ile Thr Phe Leu Leu Ala Lys Gly	747
190 195 200	
GAA GTA TTA CAA ATG GAA GAT GAT CTG GTG ATT TCA TTT CAG TTA ATG Glu Val Leu Gln Met Glu Asp Asp Leu Val Ile Ser Phe Gln Leu Met	795
205 210 215	

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CTA TGT GTC CTT GAC TAT TTT ATT AAA CTC TCA CCT CCC ATG TTG CTC	220	225	230	235	843
Leu Cys Val Leu Asp Tyr Phe Ile Lys Leu Ser Pro Pro Met Leu Leu					
AAA GAA CCA TAT AAA ACA GCT GTT ATA CCC ATT AAT GGT TCA CCT CGA	240	245	250		891
Lys Glu Pro Tyr Lys Thr Ala Val Ile Pro Ile Asn Gly Ser Pro Arg					
ACA CCC AGG CGA GGT CAG AAC AGG AGT GCA CGG ATA GCA AAA CAA CTA	255	260	265		939
Thr Pro Arg Arg Gly Gln Asn Arg Ser Ala Arg Ile Ala Lys Gln Leu					
GAA AAT GAT ACA AGA ATT ATT GAA GTT CTC TGT AAA GAA CAT GAA TGT	270	275	280		987
Glu Asn Asp Thr Arg Ile Ile Glu Val Leu Cys Lys Glu His Glu Cys					
AAT ATA GAT GAG GTG AAA AAT GTT TAT TTC AAA AAT TTT ATA CCT TTT	285	290	295		1035
Asn Ile Asp Glu Val Lys Asn Val Tyr Phe Lys Asn Phe Ile Pro Phe					
ATG AAT TCT CTT GGA CTT GTA ACA TCT AAT GGA CTT CCA GAG GTT GAA	300	305	310	315	1083
Met Asn Ser Leu Gly Leu Val Thr Ser Asn Gly Leu Pro Glu Val Glu					
AAT CTT TCT AAA CGA TAC GAA GAA ATT TAT CTT AAA AAT AAA GAT CTA	320	325	330		1131
Asn Leu Ser Lys Arg Tyr Glu Glu Ile Tyr Leu Lys Asn Lys Asp Leu					
GAT GCA AGA TTA TTT TTG GAT CAT GAT AAA ACT CTT CAG ACT GAT TCT	335	340	345		1179
Asp Ala Arg Leu Phe Leu Asp His Asp Lys Thr Leu Gln Thr Asp Ser					
ATA GAC AGT TTT GAA ACA CAG AGA ACA CCA CGA AAA AGT AAC CTT GAT	350	355	360		1227
Ile Asp Ser Phe Glu Thr Gln Arg Thr Pro Arg Lys Ser Asn Leu Asp					
GAA GAG GTG AAT GTA ATT CCT CCA CAC ACT CCA GTT AGG ACT GTT ATG	365	370	375		1275
Glu Glu Val Asn Val Ile Pro Pro His Thr Pro Val Arg Thr Val Met					
AAC ACT ATC CAA CAA TTA ATG ATG ATT TTA AAT TCA GCA AGT GAT CAA	380	385	390	395	1323
Asn Thr Ile Gln Gln Leu Met Met Ile Leu Asn Ser Ala Ser Asp Gln					
CCT TCA GAA AAT CTG ATT TCC TAT TTT AAC AAC TGC ACA GTG AAT CCA	400	405	410		1371
Pro Ser Glu Asn Leu Ile Ser Tyr Phe Asn Asn Cys Thr Val Asn Pro					
AAA GAA AGT ATA CTG AAA AGA GTG AAG GAT ATA GGA TAC ATC TTT AAA	415	420	425		1419
Lys Glu Ser Ile Leu Lys Arg Val Lys Asp Ile Gly Tyr Ile Phe Lys					
GAG AAA TTT GCT AAA GCT GTG GGA CAG GGT TGT GTC GAA ATT GGA TCA	430	435	440		1467
Glu Lys Phe Ala Lys Ala Val Gly Gln Gly Cys Val Glu Ile Gly Ser					
CAG CGA TAC AAA CTT GGA GTT CGC TTG TAT TAC CGA GTA ATG GAA TCC	445	450	455		1515
Gln Arg Tyr Lys Leu Gly Val Arg Leu Tyr Tyr Arg Val Met Glu Ser					

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ATG CTT AAA TCA GAA GAA CGA TTA TCC ATT CAA AAT TTT AGC AAA 1563  
 Met Leu Lys Ser Glu Glu Arg Leu Ser Ile Gln Asn Phe Ser Lys  
 460 465 470 475

CTT CTG AAT GAC AAC ATT TTT CAT ATG TCT TTA TTG GCG TGC GCT CTT 1611  
 Leu Leu Asn Asp Asn Ile Phe His Met Ser Leu Leu Ala Cys Ala Leu  
 480 485 490

GAG GTT GTA ATG GCC ACA TAT AGC AGA AGT ACA TCT CAG AAT CTT GAT 1659  
 Glu Val Val Met Ala Thr Tyr Ser Arg Ser Thr Ser Gln Asn Leu Asp  
 495 500 505

TCT GGA ACA GAT TTG TCT TTC CCA TGG ATT CTG AAT GTG CTT AAT TTA 1707  
 Ser Gly Thr Asp Leu Ser Phe Pro Trp Ile Leu Asn Val Leu Asn Leu  
 510 515 520

AAA GCC TTT GAT TTT TAC AAA GTG ATC GAA AGT TTT ATC AAA GCA GAA 1755  
 Lys Ala Phe Asp Phe Tyr Lys Val Ile Glu Ser Phe Ile Lys Ala Glu  
 525 530 535

GGC AAC TTG ACA AGA GAA ATG ATA AAA CAT TTA GAA CGA TGT GAA CAT 1803  
 Gly Asn Leu Thr Arg Glu Met Ile Lys His Leu Glu Arg Cys Glu His  
 540 545 550 555

CGA ATC ATG GAA TCC CTT GCA TGG CTC TCA GAT TCA CCT TTA TTT GAT 1851  
 Arg Ile Met Glu Ser Leu Ala Trp Leu Ser Asp Ser Pro Leu Phe Asp  
 560 565 570

CTT ATT AAA CAA TCA AAG GAC CGA GAA GGA CCA ACT GAT CAC CTT GAA 1899  
 Leu Ile Lys Gln Ser Lys Asp Arg Glu Gly Pro Thr Asp His Leu Glu  
 575 580 585

TCT GCT TGT CCT CTT AAT CTT CCT CTC CAG AAT AAT CAC ACT GCA GCA 1947  
 Ser Ala Cys Pro Leu Asn Leu Pro Leu Gln Asn Asn His Thr Ala Ala  
 590 595 600

GAT ATG TAT CTT TCT CCT GTA AGA TCT CCA AAG AAA AAA GGT TCA ACT 1995  
 Asp Met Tyr Leu Ser Pro Val Arg Ser Pro Lys Lys Lys Gly Ser Thr  
 605 610 615

ACG CGT GTA AAT TCT ACT GCA AAT GCA GAG ACA CAA GCA ACC TCA GCC 2043  
 Thr Arg Val Asn Ser Thr Ala Asn Ala Glu Thr Gln Ala Thr Ser Ala  
 620 625 630 635

TTC CAG ACC CAG AAG CCA TTG AAA TCT ACC TCT CTT TCA CTG TTT TAT 2091  
 Phe Gln Thr Gln Lys Pro Leu Lys Ser Thr Ser Leu Ser Leu Phe Tyr  
 640 645 650

AAA AAA GTG TAT CGG CTA GCC TAT CTC CGG CTA AAT ACA CTT TGT GAA 2139  
 Lys Lys Val Tyr Arg Leu Ala Tyr Leu Arg Leu Asn Thr Leu Cys Glu  
 655 660 665

CGC CTT CTG TCT GAG CAC CCA GAA TTA GAA CAT ATC ATC TGG ACC CTT 2187  
 Arg Leu Leu Ser Glu His Pro Glu Leu Glu His Ile Ile Trp Thr Leu  
 670 675 680

TTC CAG CAC ACC CTG CAG AAT GAG TAT GAA CTC ATG AGA GAC AGG CAT 2235  
 Phe Gln His Thr Leu Gln Asn Glu Tyr Glu Leu Met Arg Asp Arg His  
 685 690 695

**FIG. 3C**

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TTG GAC CAA ATT ATG ATG TGT TCC ATG TAT GGC ATA TGC AAA GTG AAG 2283  
 Leu Asp Gln Ile Met Met Cys Ser Met Tyr Gly Ile Cys Lys Val Lys  
 700 705 710 715

AAT ATA GAC CTT AAA TTC AAA ATC ATT GTA ACA GCA TAC AAG GAT CTT 2331  
 Asn Ile Asp Leu Lys Phe Lys Ile Ile Val Thr Ala Tyr Lys Asp Leu  
 720 725 730

CCT CAT GCT GTT CAG GAG ACA TTC AAA CGT GTT TTG ATC AAA GAA GAG 2379  
 Pro His Ala Val Gln Glu Thr Phe Lys Arg Val Leu Ile Lys Glu Glu  
 735 740 745

GAG TAT GAT TCT ATT ATA GTA TTC TAT AAC TCG GTC TTC ATG CAG AGA 2427  
 Glu Tyr Asp Ser Ile Ile Val Phe Tyr Asn Ser Val Phe Met Gln Arg  
 750 755 760

CTG AAA ACA AAT ATT TTG CAG TAT GCT TCC ACC AGG CCC CCT ACC TTG 2475  
 Leu Lys Thr Asn Ile Leu Gln Tyr Ala Ser Thr Arg Pro Pro Thr Leu  
 765 770 775

TCA CCA ATA CCT CAC ATT CCT CGA AGC CCT TAC AAG TTT CCT AGT TCA 2523  
 Ser Pro Ile Pro His Ile Pro Arg Ser Pro Tyr Lys Phe Pro Ser Ser  
 780 785 790 795

CCC TTA CGG ATT CCT GGA GGG AAC ATC TAT ATT TCA CCC CTG AAG AGT 2571  
 Pro Leu Arg Ile Pro Gly Gly Asn Ile Tyr Ile Ser Pro Leu Lys Ser  
 800 805 810

CCA TAT AAA ATT TCA GAA GGT CTG CCA ACA CCA ACA AAA ATG ACT CCA 2619  
 Pro Tyr Lys Ile Ser Glu Gly Leu Pro Thr Pro Thr Lys Met Thr Pro  
 815 820 825

AGA TCA AGA ATC TTA GTA TCA ATT GGT GAA TCA TTC GGG ACT TCT GAG 2667  
 Arg Ser Arg Ile Leu Val Ser Ile Gly Glu Ser Phe Gly Thr Ser Glu  
 830 835 840

AAG TTC CAG AAA ATA AAT CAG ATG GTA TGT AAC AGC GAC CGT GTG CTC 2715  
 Lys Phe Gln Lys Ile Asn Gln Met Val Cys Asn Ser Asp Arg Val Leu  
 845 850 855

AAA AGA AGT GCT GAA GGA AGC AAC CCT CCT AAA CCA CTG AAA AAA CTA 2763  
 Lys Arg Ser Ala Glu Gly Ser Asn Pro Pro Lys Pro Leu Lys Lys Leu  
 860 865 870 875

CGC TTT GAT ATT GAA GGA TCA GAT GAA GCA GAT GGA AGT AAA CAT CTC 2811  
 Arg Phe Asp Ile Glu Gly Ser Asp Glu Ala Asp Gly Ser Lys His Leu  
 880 885 890

CCA GGA GAG TCC AAA TTT CAG CAG AAA CTG GCA GAA ATG ACT TCT ACT 2859  
 Pro Gly Glu Ser Lys Phe Gln Gln Lys Leu Ala Glu Met Thr Ser Thr  
 895 900 905

CGA ACA CGA ATG CAA AAG CAG AAA ATG AAT GAT AGC ATG GAT ACC TCA 2907  
 Arg Thr Arg Met Gln Lys Gln Lys Met Asn Asp Ser Met Asp Thr Ser  
 910 915 920

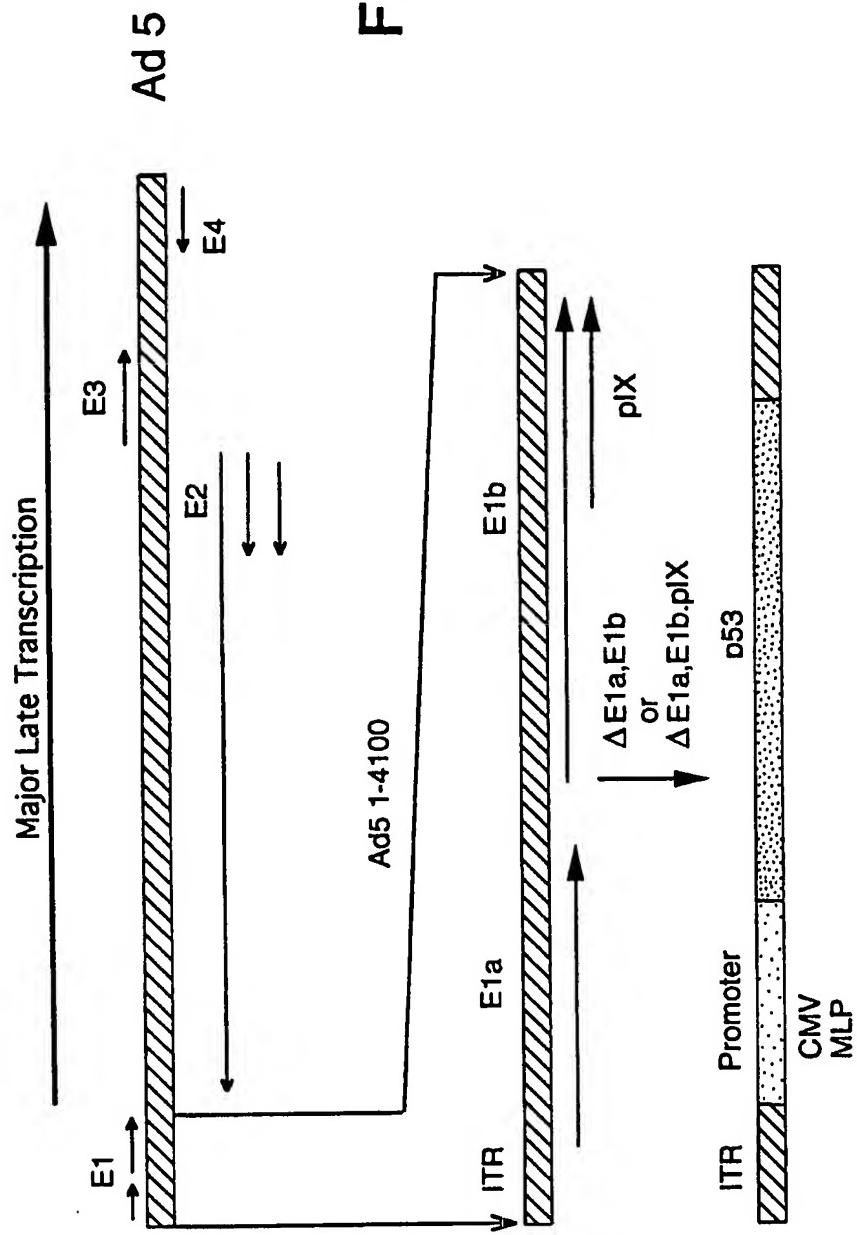
AAC AAG GAA GAG AAA TGAGGGATCTC AGGACCTTGG TGGACACTGT GTACACCTCT 2962  
 Asn Lys Glu Glu Lys  
 925

GGATTCAATTG TCTCTCACAG ATGTGACTGA TAT 2995

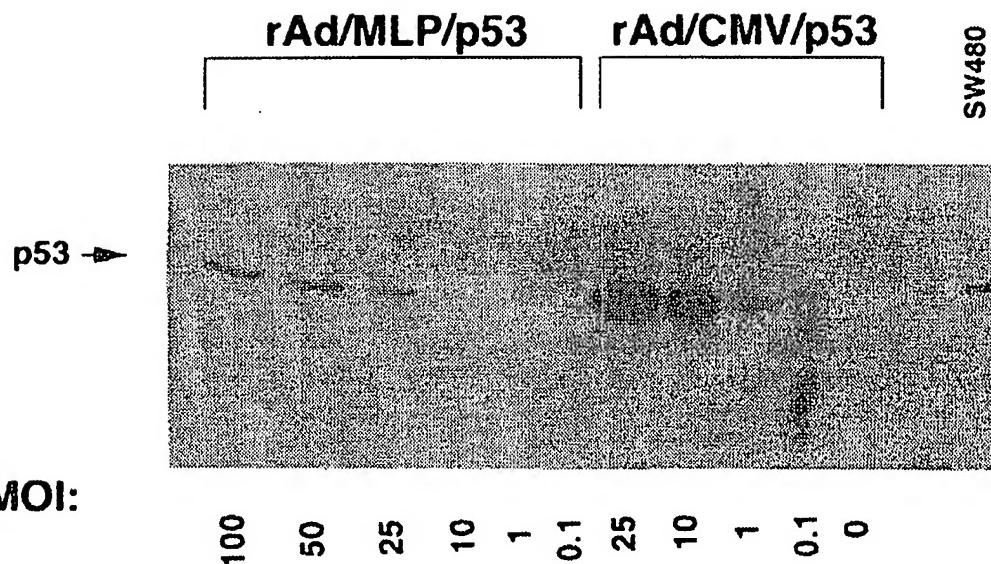
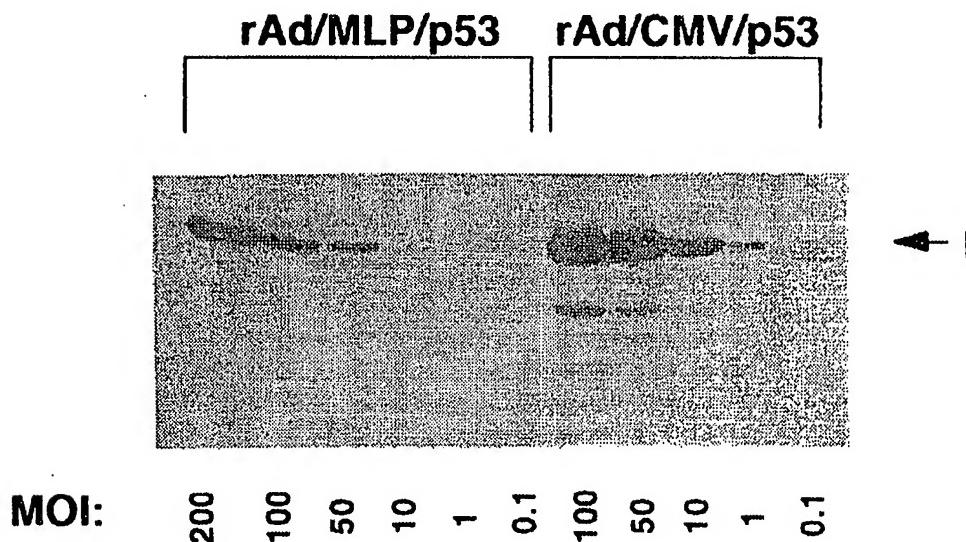
**FIG. 3D**  
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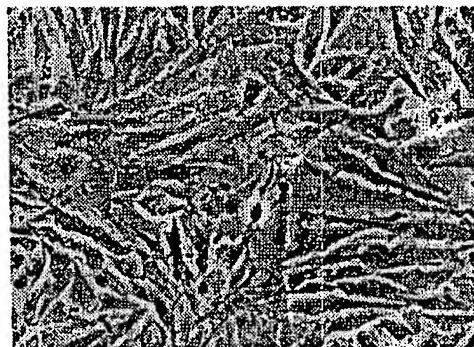
FIG. 4



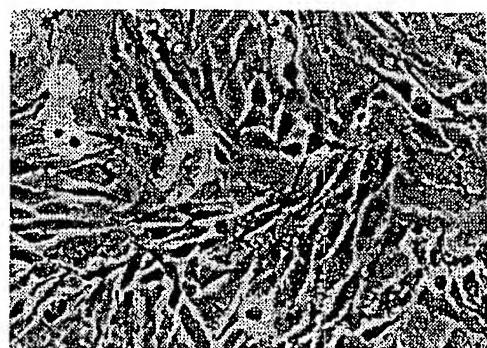
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**FIG. 5A****FIG. 5B**

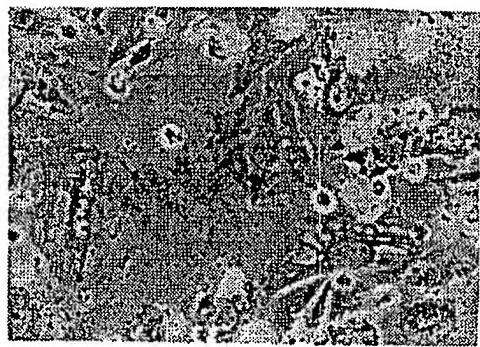
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**FIG. 6A**



**FIG. 6B**



**FIG. 6C**

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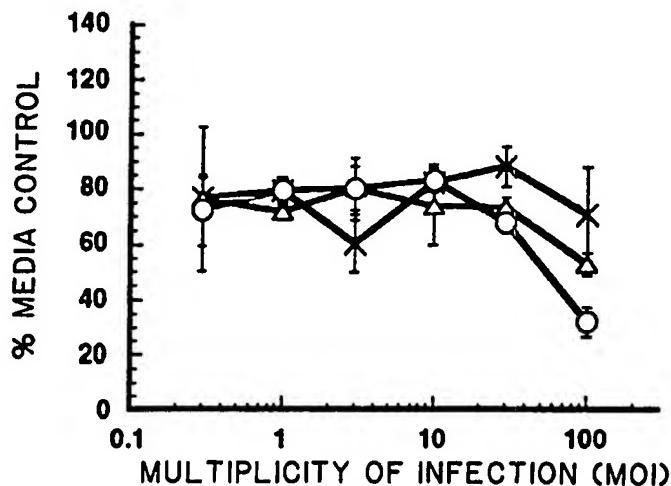


FIG. 7A

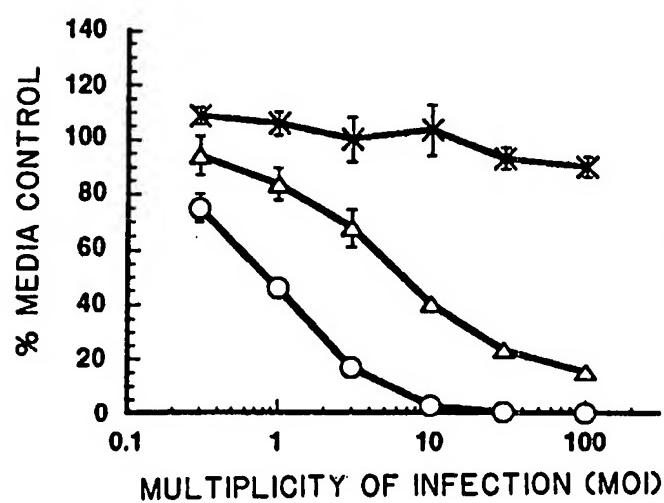


FIG. 7B

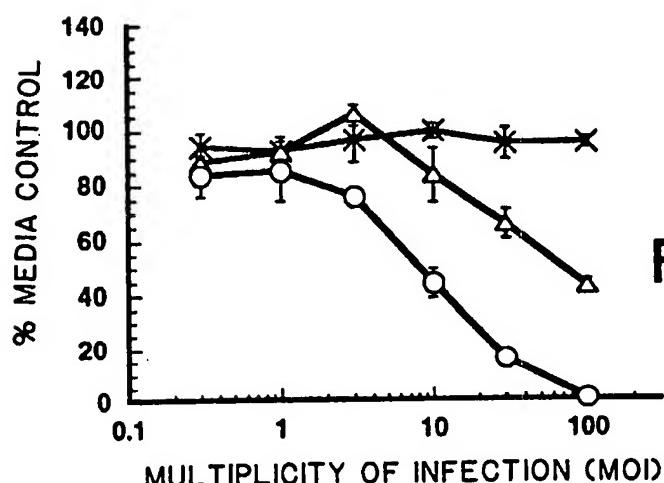


FIG. 7C

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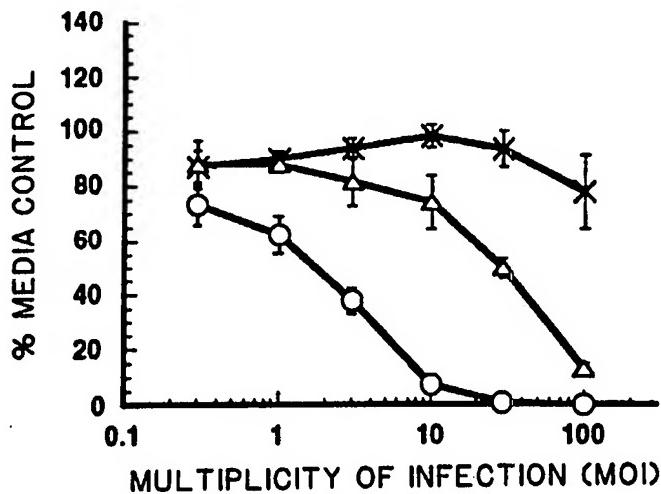


FIG. 7D

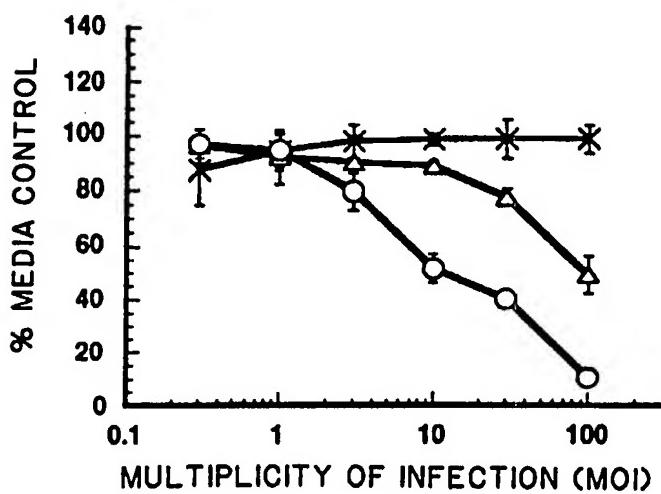


FIG. 7E

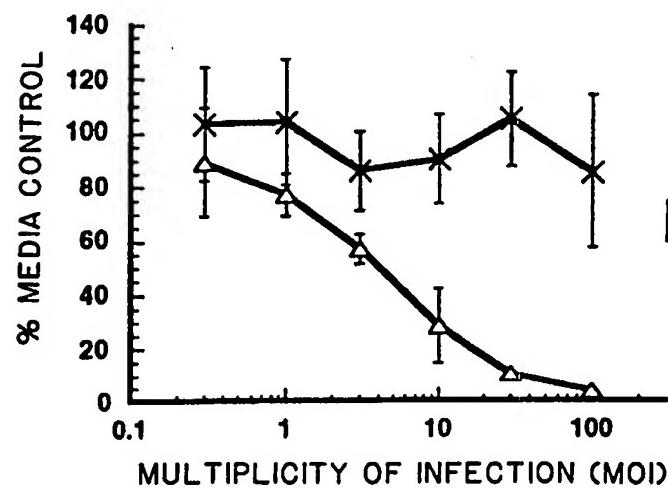


FIG. 7F

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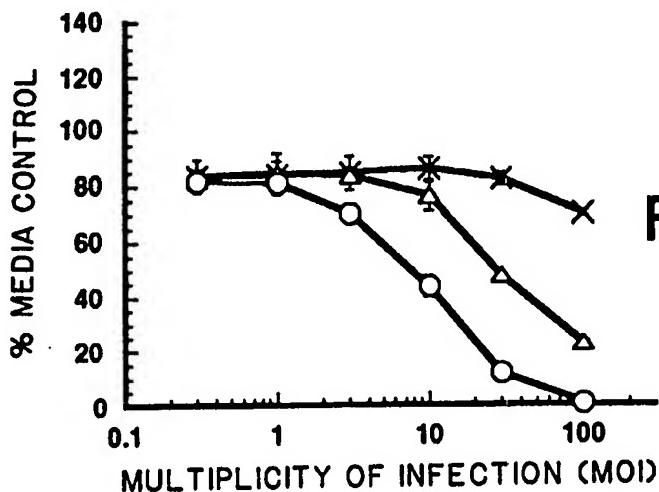


FIG. 7G

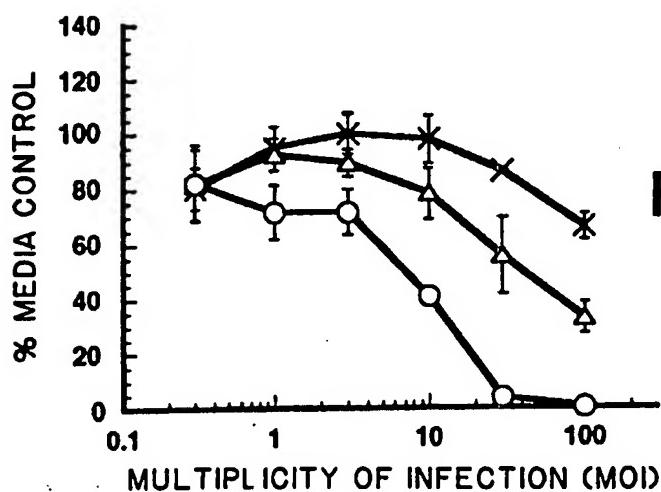


FIG. 7H

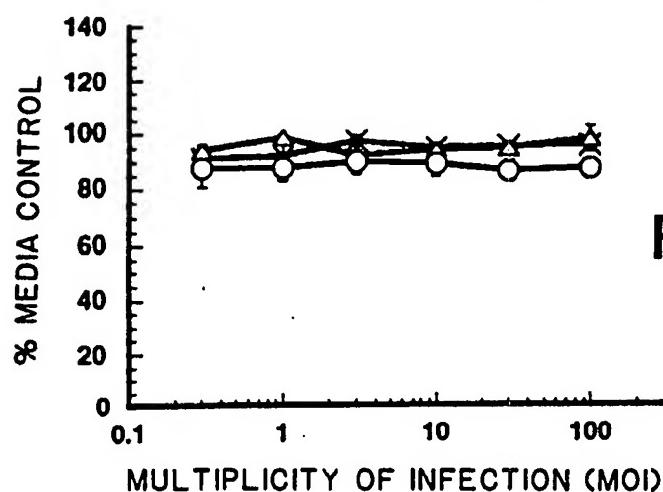


FIG. 7I

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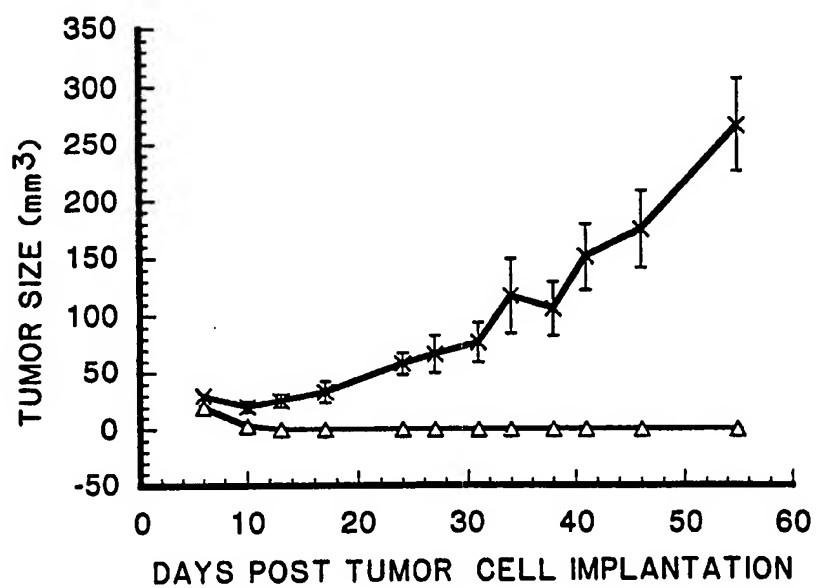
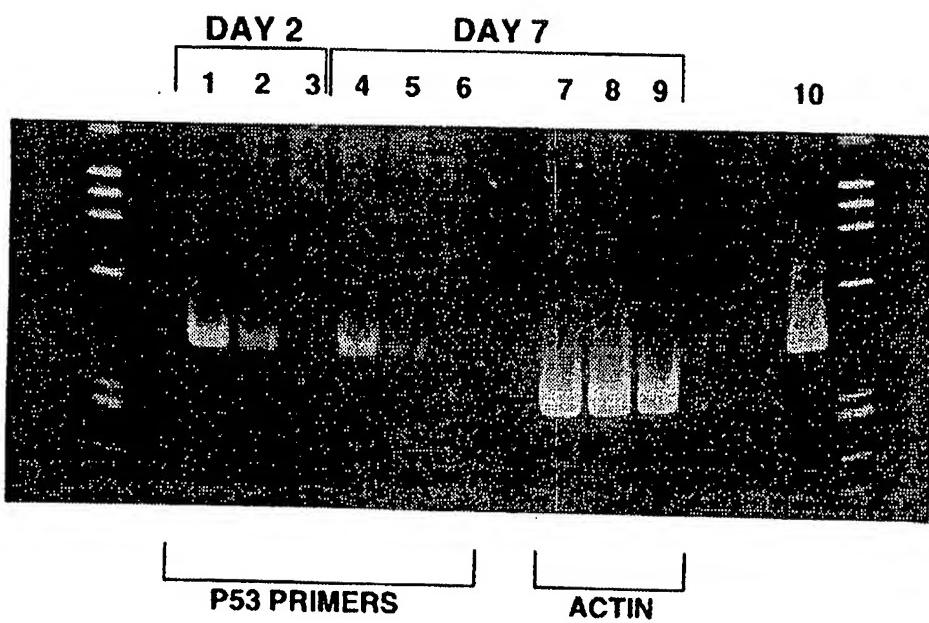


FIG. 8

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**FIG. 9**

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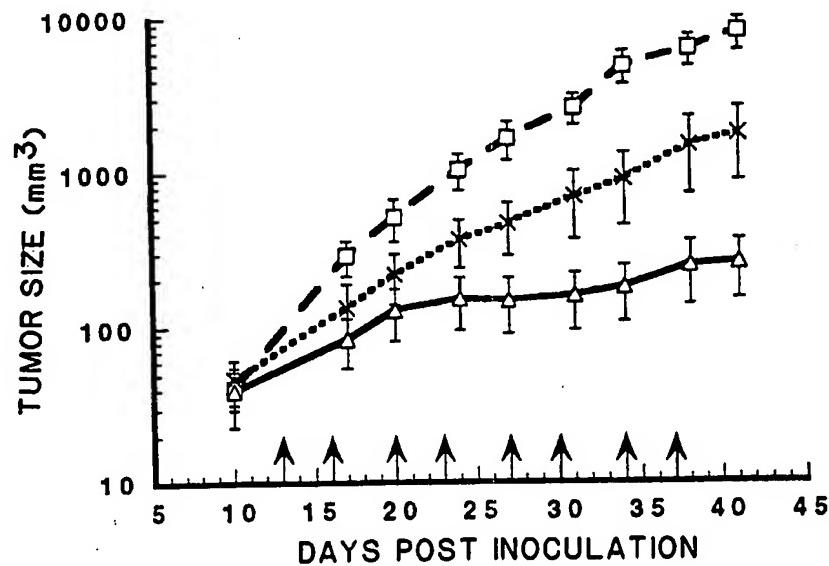


FIG. 10A

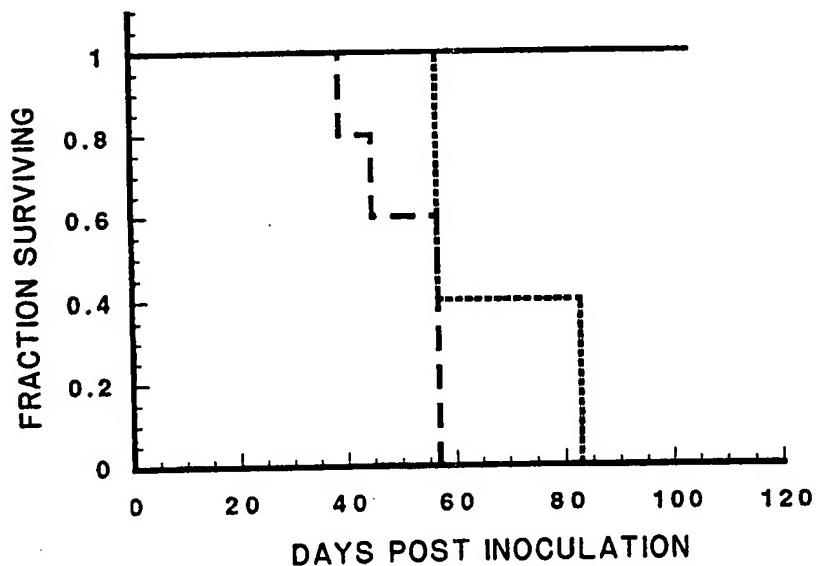
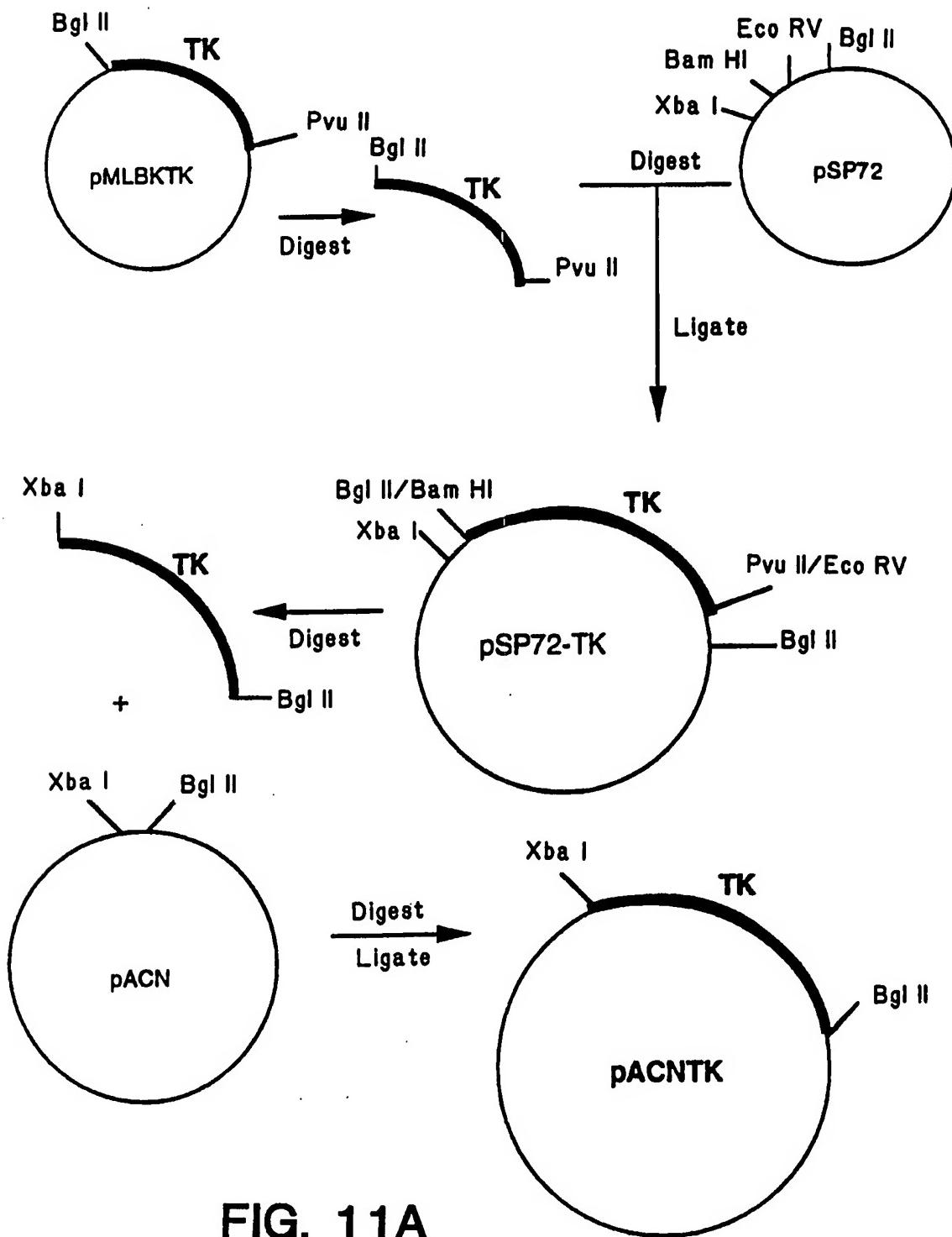
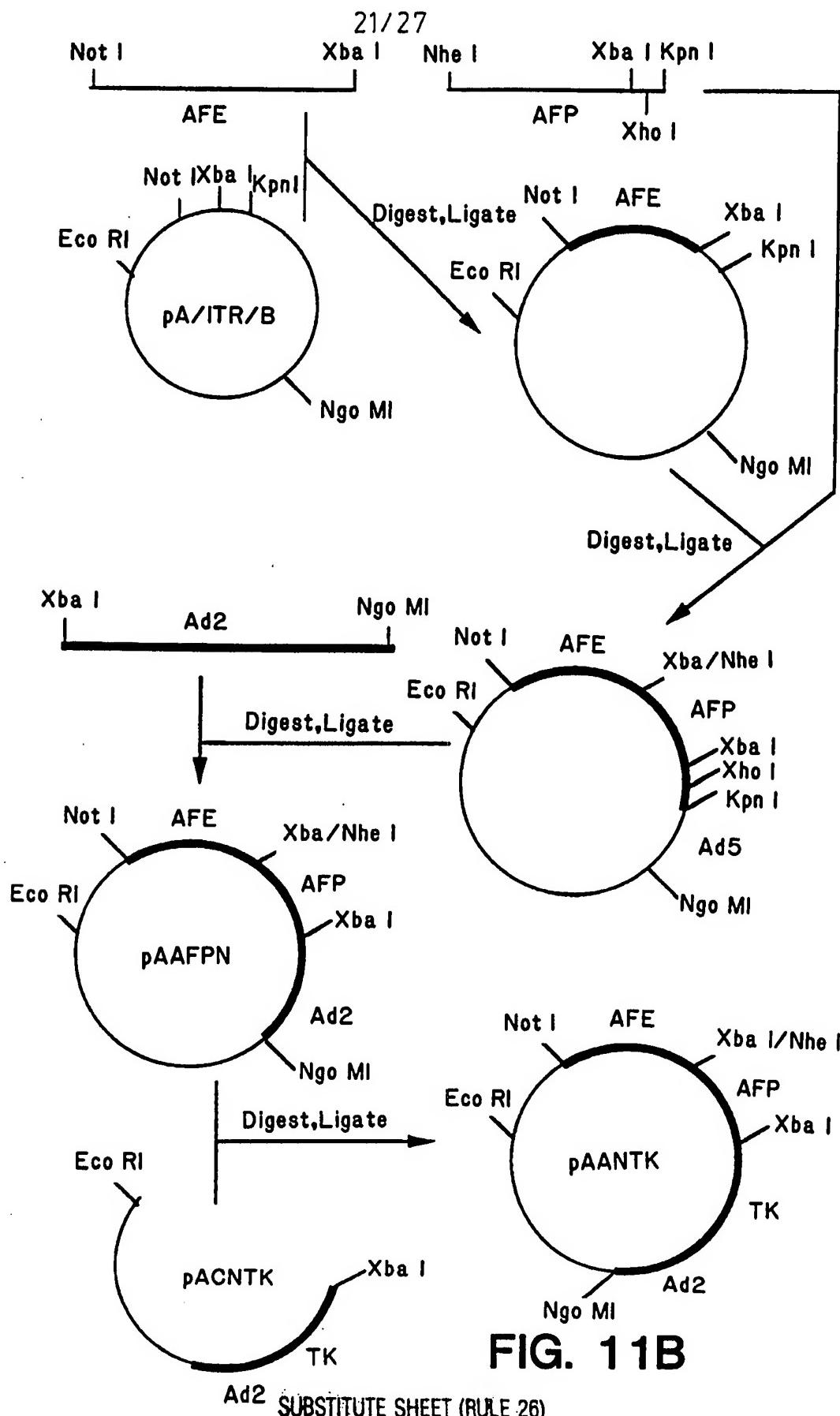


FIG. 10B

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**FIG. 11A**



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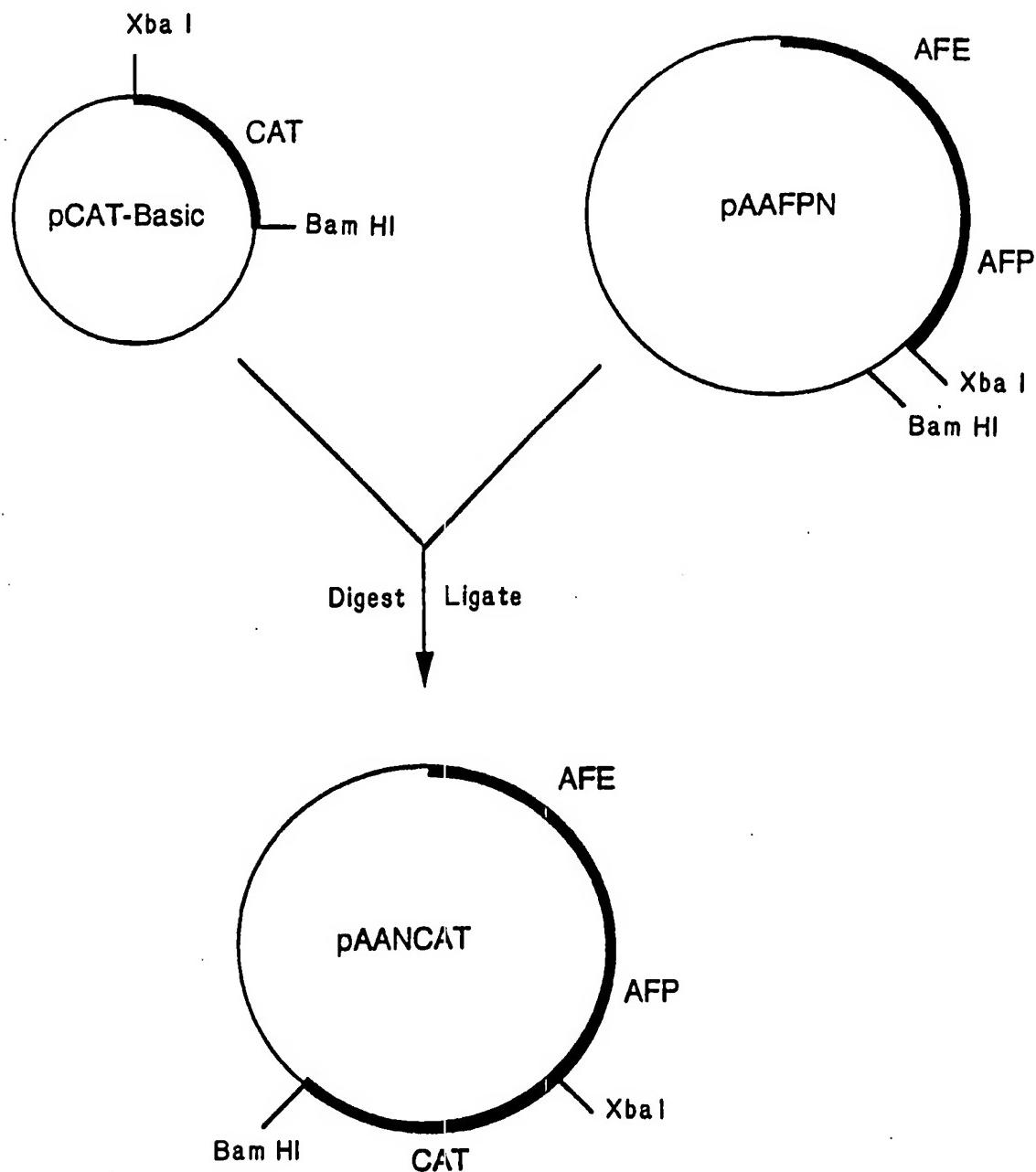
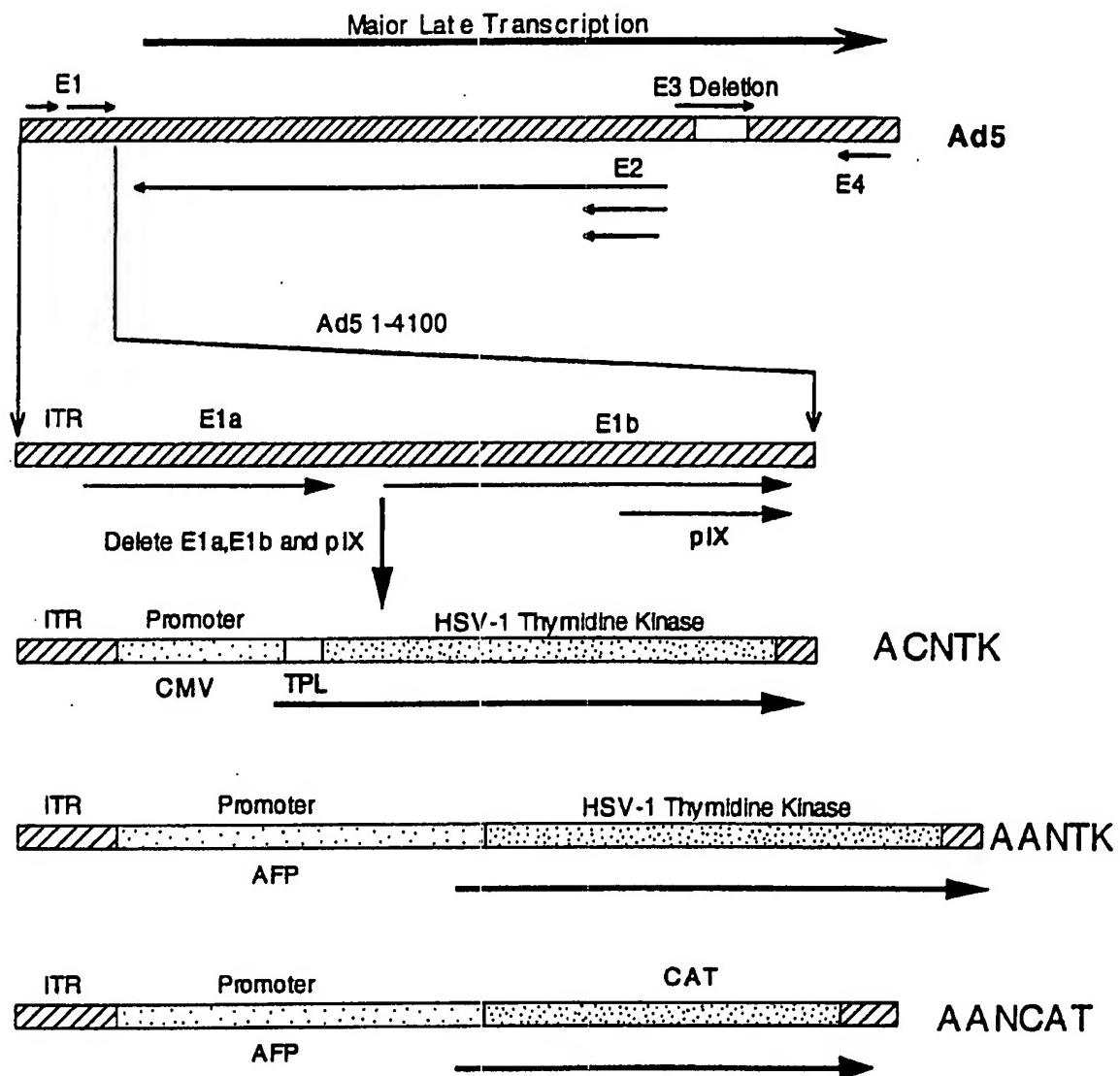


FIG. 11C

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**FIG. 12**

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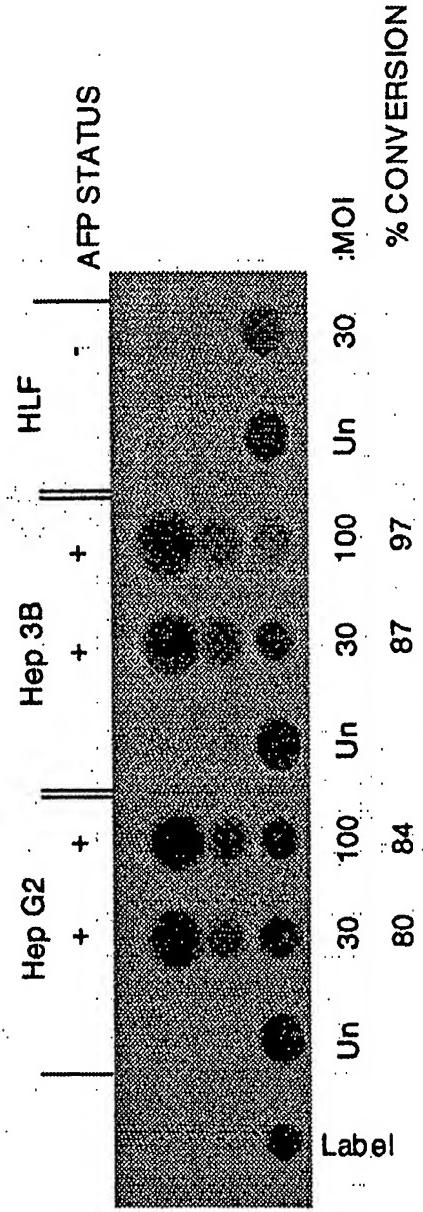
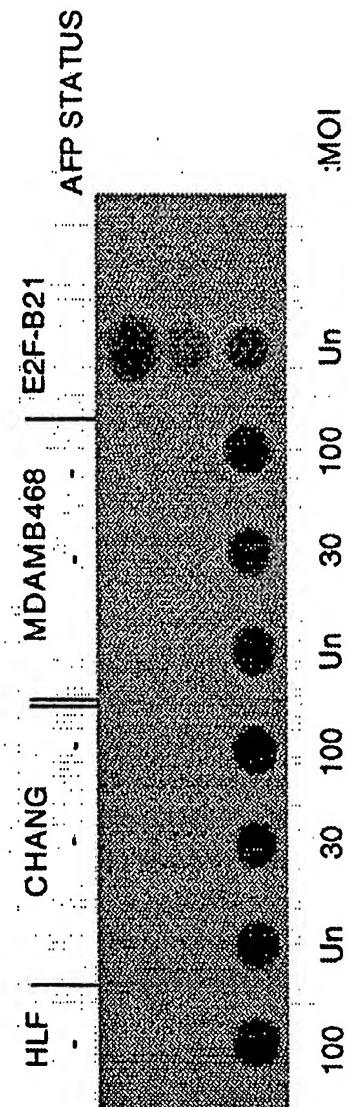


FIG. 13A



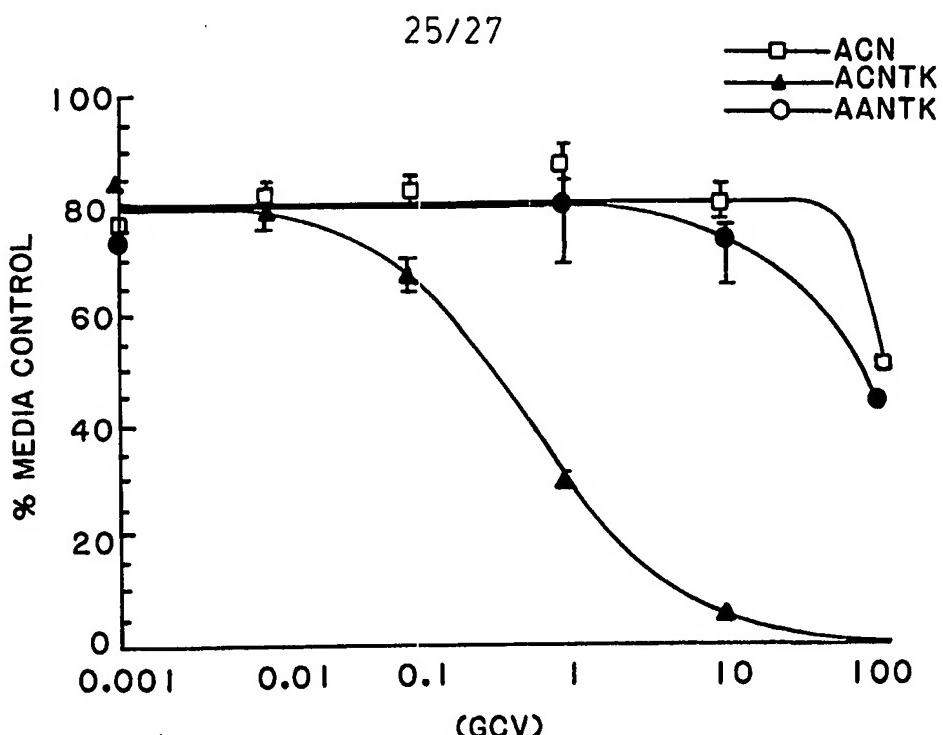


FIG. 14A

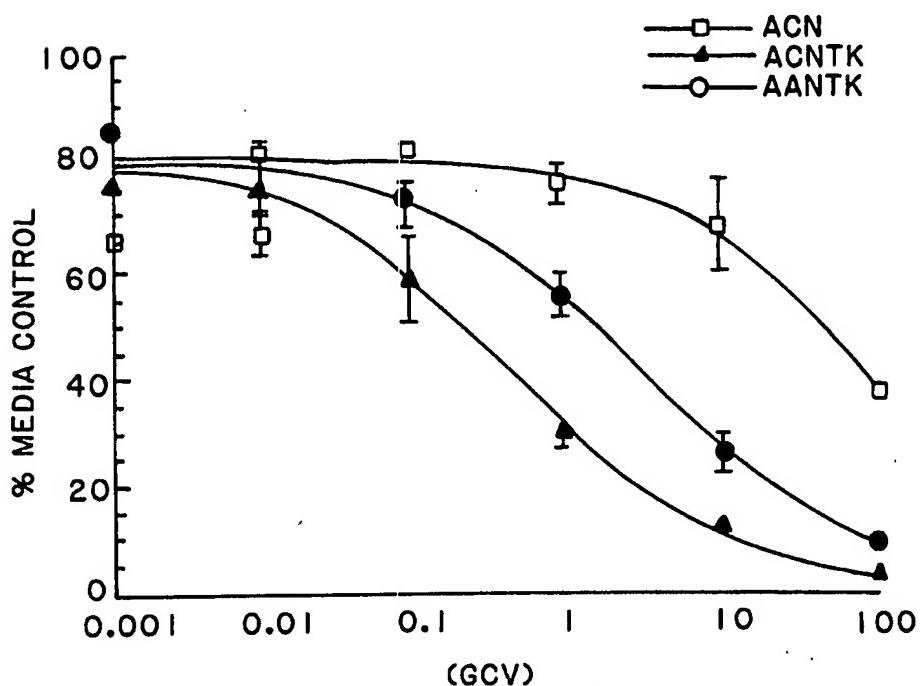


FIG. 14B

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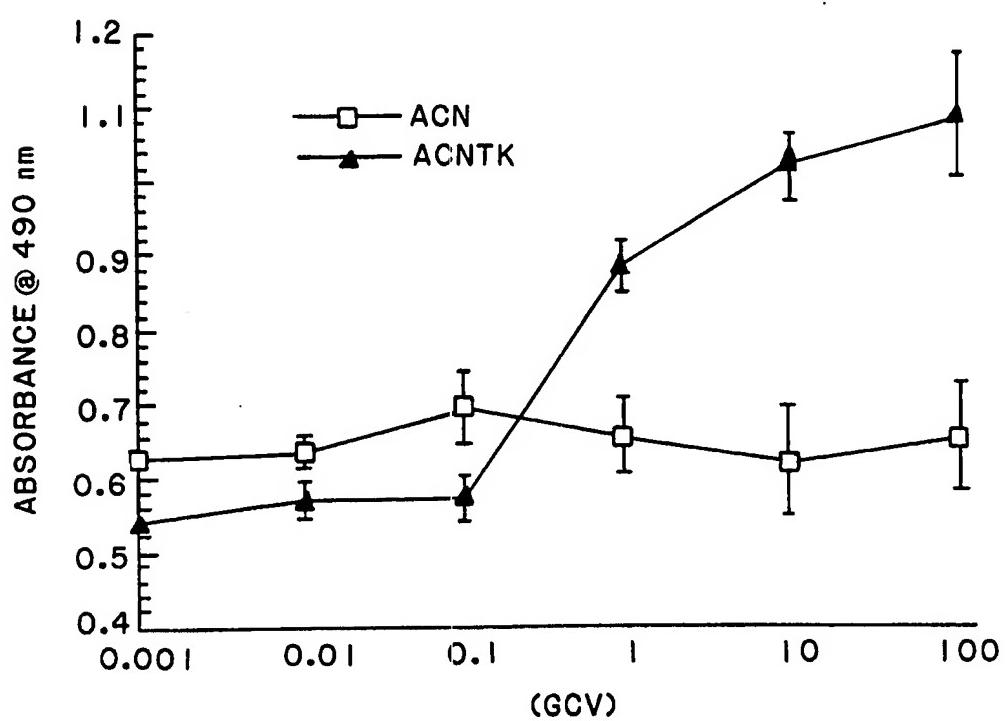


FIG. 15

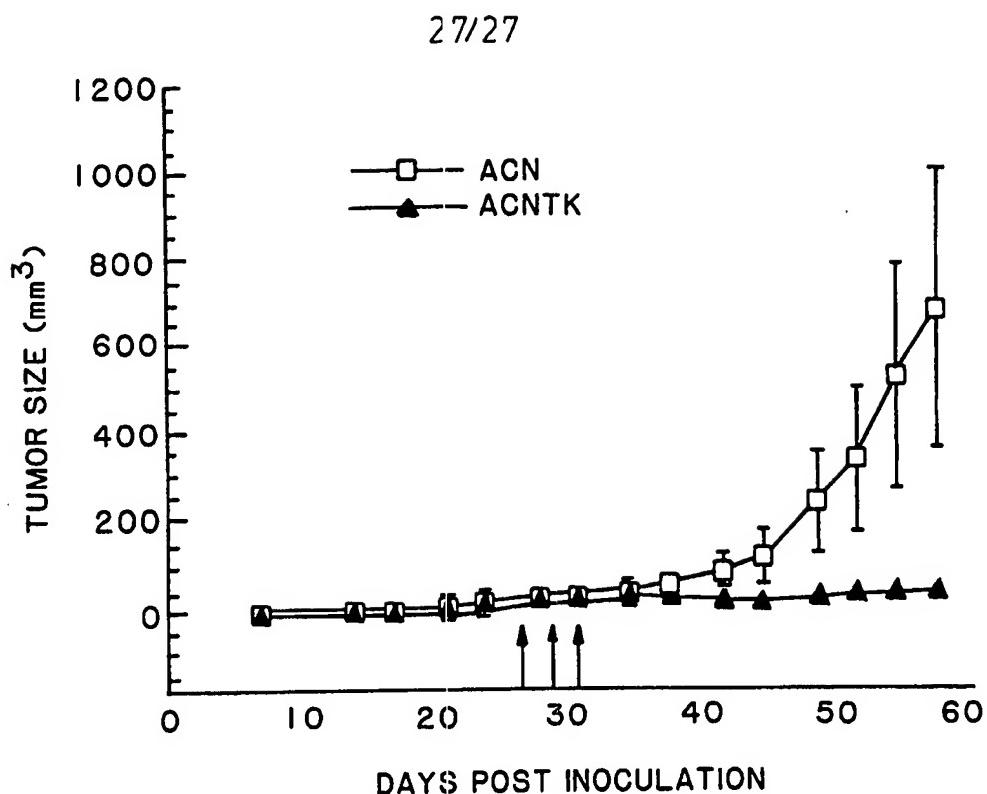


FIG. 16A

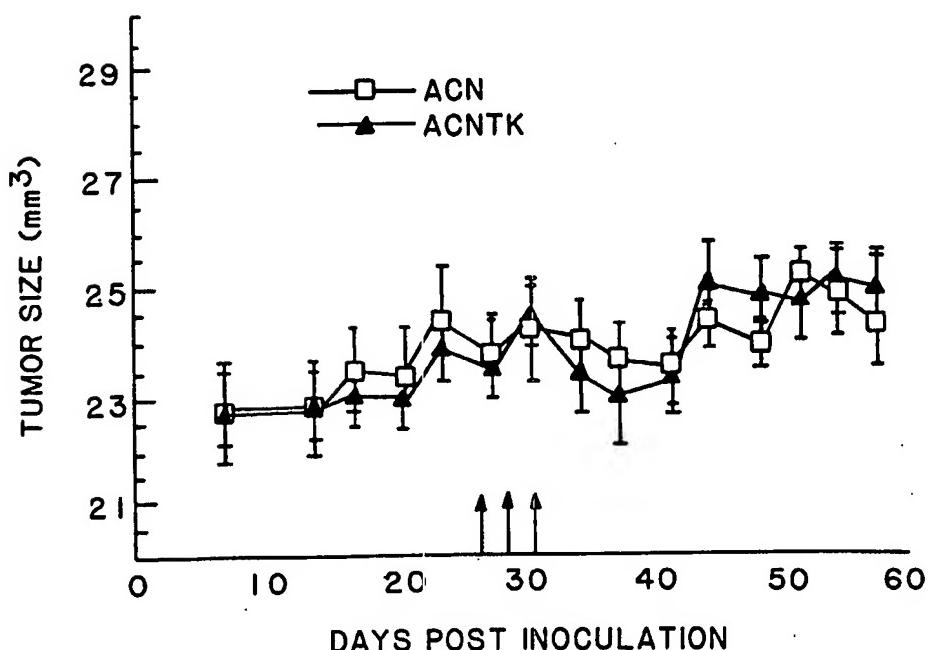
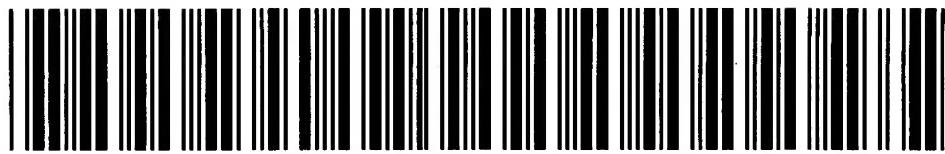


FIG. 16B

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# IDS REFERENCES



FOR

EPO - Munich  
45  
17 Sep. 2007



Merck Serono International S.A.  
Intellectual Property Department  
9, Chemin des Mines  
1202 Geneva  
Switzerland

EUROPEAN PATENT OFFICE  
Erhardtstrasse 27  
D-80469 Munich  
GERMANY  
Tel. : +49 89 2399-0

Corporate IP Department  
Tel. +41 22 414 9530  
Fax +41 22 414 9123

VIA TNT

September 14, 2007

**Publication No.:** 0 833 934  
**Application No.:** 96 917 735.1  
**Appeal No.:** T 1205/07  
**Proprietors:** Crucell Holland B.V., Archimedesweg 4, 2333 CN Leiden,  
The Netherlands  
**Opponent:** Opponent 01 – Merck Serono International S.A., 9 Chemin  
des Mines, 1202 Geneva, Switzerland  
**Our Ref.:** OP33

**OPPONENT'S STATEMENT OF GROUNDS OF APPEAL**

This constitutes the written statement setting out the grounds of appeal of the Appellant (Opponent 01), Merck Serono International S.A., against the decision of the Opposition Division (OD) dated May 11, 2007 maintaining European Patent No. 0 833 934 in amended form.

The OD decided that the claims of the patent as granted contravened both Art 100(c) and Art. 100(b). We have no quarrel with this part of the decision. However, the OD also decided that AR2, filed by the Patentee during the oral proceedings to overcome the above-mentioned deficiencies, satisfied all requirements under the EPC, including those of Art. 100(a) EPC. The opposed patent was thus maintained in amended form based on the claims of AR2.

Appellant hereby requests that the opposed patent be revoked in its entirety based on novelty (Art. 100(a) and 54 EPC) and of lack of inventive step (Art. 100(a) and 56 EPC)

It is further requested to admit further documents as specified below under item 2 into the proceedings.

An oral hearing is requested if the Board of Appeal does not intend to revoke the patent in the light of the written submissions.

**1. New documents filed with the present submission**

The opponent submits herewith the four (4) following documents, which will be referred to by the numbers given below.

Documents D52 to D55 are highly relevant to the validity of the opposed patent.

**D52 Figure 2 by Opponent 01.**

This Figure illustrates the inventive step argument made in section 5.1.1. of this submission.

**D53 van den Elsen et al. (1982) "The relationship between region E1a and E1b of human adenoviruses in cell transformation" Gene. 18(2):175-85.**

This article discloses a BRK cell line transformed with a fragment consisting of Ad5 nucleotides 1045-3978, i.e. lacking pIX sequences. It is thus highly relevant for inventive step.

**D54 Kawarabayasi and Sugisaki (1985) "Structure of viral DNA in a rat cell line transformed by the cloned EcoRI-C fragment of adenovirus 12." Nucleic Acids Res. 13(18):6591-604.**

This article discloses a rat cell line transformed with a fragment consisting of Ad12 nucleotides 118-3520, i.e. lacking pIX sequences. It is thus highly relevant for inventive step.

**D55 Kimura et al. (1981) "Nucleotide sequence of the transforming early region E1b of adenovirus type 12 DNA: structure and gene organization, and comparison with those of adenovirus type 5 DNA." Nucleic Acids Res. 9(23):6571-89.**

This article compares the sequence of the E1 regions of Ad5 and of Ad12, and is thus useful for analyzing D54.

**2. The claims of the patent as maintained in amended form**

In addition to the cancellation of claims 7, 9, 12-19, 21, 22, 24-26, 29, 31, 33 and 36, there are three main differences between the claims of the patent as granted and the claims as maintained in amended form (AR2). More specifically, in AR2:

- the packaging cell is defined as a cell comprising in its genome an adenoviral sequence consisting of Ad5 nucleotides 459-3510 (vs. a cell that encodes the adenoviral E1A and E1B proteins but lacks pIX sequences in the patent as granted);
- the cells are limited to Human Embryonic Retinoblast (HER), Human Embryonic Kidney (HEK), or a Human Embryonic Lung (HEL) cells; and

- the term "packaging system" is replaced with the term "combination".

The broadest claim of the patent as maintained in amended form is claim 19, which is directed to a packaging cell characterized in that it comprises in its genome an adenoviral sequence consisting of Ad5 nucleotides 459-3510, and wherein said cell is a HER, HEK or HEL cell.

Claim 1 is directed to a combination of the packaging cell of claim 19 with an adenoviral vector, wherein said adenoviral vector has no overlapping sequences which allow for homologous recombination between adenovirus DNA present in the packaging cell and the vector.

Claims 2, 3, 5-9, 11-13, 15 and 18 all depend either directly or indirectly on claim 1.

Claim 4 is directed to a combination of a packaging cell with an adenoviral vector, wherein said combination comprises an adenoviral vector resulting from the action of a nucleic acid polymerase comprised by the combination of claim 3.

Claim 10 is redundant with claim 19.

Claim 16 is directed to a specific cell according to claim 10 that has been deposited at the ECACC.

Claim 17 is directed to a packaging cell comprising in its genome an adenoviral sequence encoding at least both the E1A and a mutated E2A region, wherein at least one of the E2A products is temperature sensitive, and wherein said cell is a HER, HEK or HEL cell.

### **3. Novelty (Art. 100(a) & Art 54 EPC)**

Claim 17 of AR2 is not novel over D22. The Board is directed to section 5.4. of the Grounds of Opposition filed by Opponent 02.

During the oral proceedings, the limitation "wherein said cell is a HER, HEK or HEL cell" was added to original claim 35. However, this amendment is not sufficient to gain novelty over D22. Specifically, in D22 the Ad2ts111Sal1A and Ad2EcoRIA packaging constructs were transfected into the 293 cell line, thereby providing the 293 cell line with packaging nucleic acids that provide the transfected cells with the ability to produce adenoviral gene products from the E1A and E2 regions, wherein the packaging nucleic acid molecule encoding the E2A region is mutated so that at least one E2A product is temperature sensitive (see e.g. page 886, left column, lines 11-15 of D22). As evidenced by D4, the 293 cell line is a HEK cell line (see e.g. first sentence of the abstract of D4).

Therefore, claim 17 lacks novelty over D22.

#### **4. Inventive Step (Art. 100(a) & Art 56 EPC)**

The OD decided that all claims of AR2 were allegedly inventive. Contrary to the OD's finding, it will be demonstrated herebelow that claims 1-16, 18 and 19 of AR2 lack inventive step.

We will first deal with claim 19, which is the broadest claim of the patent according to AR2.

##### **4.1. Claim 19 lacks inventive step**

In the proceedings, Opponent 01 had combined D21 with the knowledge of the person skilled in the art illustrated by e.g. D3 to arrive at the cell of claim 19 in an obvious manner (see section e.g. 6.6.1. of the decision). We maintain that this is the case.

###### **4.1.1. Problem solution approach**

###### **(i) D21 as closest prior art**

D21, published in December 1994, provides both adenoviral vectors and packaging cell lines allowing to propagate such vectors (see e.g. title of D21). In addition, D21 aims at overcoming the problem lying in the generation of unwanted replication-competent adenoviruses (RCA), as indicated in column 3, lines 24-27 of D21a, the description of which corresponds to an English translation of D21. D21 is thus considered to be the closest prior art.

###### **(ii) Difference between claim 19 and D21**

Claim 19 is directed to a packaging cell characterized in that it comprises in its genome an adenoviral sequence consisting of Ad5 nucleotides 459-3510, and wherein said cell is a Human Embryonic Retinoblast (HER) cell, a Human Embryonic Kidney (HEK), or a Human Embryonic Lung (HEL) cell. The E1 region of the Ad5 genome was well-known in the art at the priority date of the opposed patent (see e.g. column 13, lines 64-65 of D21a). The person skilled in the art thus knew that nucleotides 459-3510 of Ad5 comprised the sequences coding for the E1A proteins, for E1B-21kD, and for E1B-55kD.

D21 discloses a complementation cell comprising a fragment of the Ad5 genome (see column 10, lines 53-57 of D21a). This complementation cell is used for packaging adenoviruses (see title of D21a). As indicated in column 10, lines 4-7 of D21a, the complementation cell of D21 encodes the E1A proteins, E1B-21kD, and E1B-55kD. In addition, the complementation cell may be a HER cell (see e.g. column 12, lines 6-8 of D21a).

Thus, the only difference between the packaging cell of claim 19 and the packaging cell of D21 lies in the boundaries of the specific fragment integrated in the genome of the cells, i.e. nucleotide 459 at the 5' end and nucleotide 3510 at the 3' end.

*(iii) Objective technical problem & solution provided by the opposed patent*

The objective technical problem to be solved by claim 19 of the opposed patent is therefore the provision of an alternative packaging cell line.

The solution of claim 19 of the opposed patent is a HER, HEK or HEL cell comprising in its genome nucleotides 459-3510 of Ad5.

It will be shown herebelow that this solution was obvious in view of D21 combined with the knowledge of the person skilled in the art. Figure 2 (D52) enclosed herewith is submitted to illustrate our argument.

*(iv) This solution was obvious in view of the prior art*

D21 pertains to a vector deleted for all or part of the E1A region and the whole of the sequences coding for the early proteins of the E1B region (column 4, lines 4-6 of D21a).

In the embodiment wherein all the E1A region is deleted, the 5' boundary of the deletion must be located around nucleotide 468 of Ad5, which the person skilled in the art knew to be the position of the E1A promoter (see e.g. page 3, line 33 of D3). Thus, D21 teaches a vector in which the 5' boundary is located around nucleotide 468 of Ad5.

Additional information about the 3' boundary of such a deletion is given in the same paragraph (see column 4, lines 42-45 of D21a). It is specifically indicated that the deletion must necessarily encompass nucleotides 1634-3509 of the Ad5 E1 region. Accordingly, D21 teaches a vector in which the 3' boundary is located at nucleotide 3509 of Ad5.

Thus this paragraph of D21 suggests a vector deleted for nucleotide 468-3509 of Ad5.

Since the packaging cell line must provide all the functions deleted in the vector (see column 1, lines 5-10 of D21a), and since one should eliminate the sequences in common to the vector and the Ad fragment integrated into the packaging cell (see column 4, lines 42-51 of D21a), the person skilled in the art knows that the packaging cell line must provide the functions missing in the vector but nothing more. As a matter of fact, the person skilled in the art would see the packaging line as a mirror image of the vector, said packaging cell providing the functions missing in the vector. Hence, the packaging line is directly and unambiguously derivable from the vector by the person skilled in the art.

In the present case, the mirror image of an Ad5 vector deleted in nucleotides 468-3509 is a packaging cell line comprising in its genome nucleotides 468-3509 of Ad5.

As apparent from D3, an Ad5 fragment consisting of nucleotides 459-3510 encodes exactly the same functions as a fragment consisting of nucleotides 468-3509, i.e. the E1A and E1B early proteins. On the other hand, pIX is missing in either Ad5 fragment. As also apparent from D3, no function has been assigned to nucleotides 459 to 468 of Ad5. Therefore, the presence of these nine additional nucleotides in the packaging cell line of claim 19 cannot have any technical effect.

Thus, the packaging cell of claim 19 of the opposed patent is a mere equivalent without technical effect of the packaging cell line suggested in D21. In conclusion, the packaging cell of claim 19 lacks inventive step in view of D21 combined with the knowledge of the person skilled in the art.

#### 4.1.2. The OD's decision

In section 6.6.2 of the decision the OD sets out the reasons why it came to the conclusion of the existence of an inventive step. We will now discuss the OD's arguments in detail, and show that the OD's reasoning is flawed.

##### (i) Omission of pIX in the packaging cell line

The OD asserts that there is no teaching in D21 to omit pIX from the packaging cell, neither implicit and certainly not explicit. The OD cites Example 2 and the passage in column 10, lines 58-65 to support his assertion.

However, the OD has disregarded the passage in column 10, lines 4-7 of D21a, which provides an unambiguous implicit support for a packaging cell lacking pIX sequences:

"According to an advantageous embodiment, a complementation line according to the invention comprises, in particular, all or part of the E1A region and the whole of the sequences coding for the early proteins of the E1B region."

D21 thus teaches a preferred packaging cell line that comprises the sequences coding for E1A and the early proteins of the E1B region.

The fact that this packaging cell line has been defined as "comprising sequences coding for the early proteins of the E1B region" and not as "comprising the E1B region" must be interpreted as a teaching to use E1B without pIX sequences. This wording necessarily excludes pIX, which was known to be a late protein (see e.g. column 4, line 42 of D21a).

This specific wording cannot be seen as an arbitrary choice of the authors of D21. As a matter of fact, D21 constantly makes a difference between the early proteins of the E1B region and the late pIX protein.

In the "Background of the Invention" section, D21 differentiates the E1B proteins from the pIX protein, and teaches that there is an overlap between the transcription termination signal of the E1B proteins and the sequence coding for the pIX protein:

"The gene coding for structural protein IX of which the capsid is composed is located at the 5' end of the adenoviral genome and overlaps the E1B region at its 3' end. The protein IX transcription unit utilizes the same transcription termination signal as the E1B transcription unit."

(column 2, lines 36-41 of D21a)

Later on, when describing the adenoviral vectors to be used with the packaging cell lines, D21a further clarifies in column 4, lines 32-42 what is meant by the "sequences coding for the E1B early proteins":

"According to a first variant, an adenoviral vector according to the invention is derived from the genome of a natural or wild-type adenovirus by deletion of all or part of the E1A region and the portion of the E1B region comprising the whole of the sequences coding for the early proteins. According to a preferred embodiment, the deletion affects the promoter and the sequences coding for the expression products of the E1B region, that is to say the early proteins, and does not include all or part of the transcription termination signal which overlaps the sequences coding for the late protein IX."

Therefore, the sequences coding for the E1B early proteins do not include the transcription termination signal of the E1B early proteins, which overlaps the sequences coding for the late protein IX. In other words, D21 unambiguously teaches that the sequences coding for the E1B early proteins do not comprise any pIX sequences.

In view of the above, the packaging cell line disclosed in column 10, lines 4-7 of D21 must be interpreted as an implicit teaching of a cell line not comprising any pIX sequences. There is no reason for the person skilled in the art to interpret a "packaging cell line that comprises the sequences coding for E1A and the early proteins of the E1B region" to be a cell comprising the sequences coding for the late pIX protein.

*(ii) The combination of the teaching in column 4 with the teaching in column 10*

The OD states that there is allegedly no reason why the person skilled in the art would combine the teaching in column 4 relating to a vector with the teaching in column 10 relating to a packaging cell. The Appellant disagrees with this assertion.

According to the Guidelines for Examination, C-IV-9.9:

"In determining whether it would be obvious to combine two or more distinct disclosures, the examiner should also have regard in particular to the following:

(...)

(iii) the combining of two or more parts of the same document would be obvious if there is a reasonable basis for the skilled person to associate these parts with one another."

As will be shown below, in the present case there is "a reasonable basis" for the skilled person to associate the teaching in column 4 relating to a vector with the teaching in column 10 relating to a packaging cell.

Firstly, D21 relates to packaging systems for generating adenoviruses, wherein the system comprises an adenoviral vector *together with* a packaging cell in which the vector is used. This is clearly indicated in the first sentence of D21:

"The invention relates to new defective adenoviral vectors permitting the transfer and expression of genes of interest to a host eukaryotic cell or organism, as well as to new complementation lines complementing in trans the essential viral functions which have been deleted from the genome of these recombinant adenoviruses."

(column 1, lines 5-10 of D21a)

D21 thus relates to the combination of a defective adenoviral vector and of a packaging cell line providing in *trans* the functions which have been deleted in the corresponding adenoviral vector. Since the packaging cell line is designed to complement the vector, the person skilled in the art would not consider these two elements of the invention separately. Consequently, there is a basis in D21 to associate the teaching relating to a vector with the teaching relating to a packaging cell.

In addition, D21 emphasizes that the packaging cell line should not only be able to complement the vector, but should also be designed in such a way as to reduce or eliminate the adenoviral sequences in common with the vector:

"As regards an adenoviral vector according to the Invention derived from a human adenovirus type 5, said deletion comprises at least the sequences lying between nucleotides 1634 and 3509 of the adenoviral genome, the sequence of which is disclosed in the GenBank data bank under the reference M73260 [D3, editor's note]. The object of this deletion is to reduce or eliminate sequences which are common to an adenoviral vector according to the invention and the adenoviral genome fragment integrated in a complementation line, for example line 293."

(column 4, lines 42-51 of D21a)

The above paragraph gives a clear motivation to the person skilled in the art to combine the position of the deletion present in the vector with the position of the adenoviral fragment present in the genome of the packaging cell in such a way as to reduce or eliminate sequences which are common to these two elements of the invention. As a matter of fact, during the oral proceedings, both the Patentee and the two Opponents agreed on the fact that the person skilled in the art would see the packaging cell as a "mirror image" of the adenoviral vector.

In view of the above, D21 not only provides a "reasonable basis" but provides a clear motivation for the skilled person to associate the teaching relating to a vector with the

teaching relating to a packaging cell. In other words, the person skilled in the art immediately derived the packaging cell line from the vector.

(iii) The teaching in column 4 of D21a

The OD alleges that the following passage in column 4 of D21a teaches the skilled person to use a vector without pIX sequences in a cell comprising pIX sequences:

"As regards an adenoviral vector according to the invention derived from a human adenovirus type 5, said deletion comprises at least the sequences lying between nucleotides 1634 and 3509 of the adenoviral genome, the sequence of which is disclosed in the GenBank data bank under the reference M73260 [D3, editor's note]. The object of this deletion is to reduce or eliminate sequences which are common to an adenoviral vector according to the invention and the adenoviral genome fragment integrated in a complementation line, for example line 293."

(column 4, lines 42-51)

The Appellant strongly disagrees with the OD's interpretation for the two reasons explained herebelow.

Firstly, the paragraph cited above teaches that the vector must comprise a deletion extending from nucleotide 1634 to nucleotide 3509 of Ad5. Since the pIX gene lies between nucleotides 3551 and 4070 of Ad5 (see e.g. D3), all pIX sequences are located *outside* of the deletion. Thus the above passage of D21 teaches the skilled person to use a vector comprising pIX sequences.

Since this paragraph further teaches that the sequences in common between the vector and the packaging line should be reduced or eliminated, the packaging cell line to be used with this vector should be devoid of pIX sequences. Thus the above paragraph teaches the skilled person to use a vector comprising pIX sequences in a complementation cell without pIX sequences, which is exactly the opposite of what is stated by the OD.

Secondly, the paragraph mentions that the cell line may *for example* be the 293 cell line, which is the only packaging cell line available in the prior art (see sentence bridging column 2 and column 3 of D21a). However, the statement that it is advantageous to reduce or eliminate common sequences is a general statement that is not limited to the 293 cell line. Specifically, D21 does not pertain to new adenoviral vectors to be used with the 293 cell line, but to new adenoviral vectors to be used with new packaging cell lines (see e.g. column 1, lines 5-10 of D21a). There is absolutely no reason to conclude that the general statement relating to overlapping sequences does not apply to the packaging cell lines of the invention.

(iv) Conclusion

In view of the above, it is submitted that the OD was wrong in concluding that the claims of AR2 are inventive.

#### **4.1.3. Additional remarks**

During the oral proceedings as well as in the written submissions, the Patentee tried to argue that the inventiveness of the claims stems from the absence of pIX sequences from the genome of the cell line. However, at the priority date of the opposed patent, the person skilled in the art knew that, while the cell must encode the E1A and the E1B early proteins, the presence of pIX within the cell is entirely optional.

For example, D53 (van den Elsen et al., 1982) teaches a primary Baby Rat Kidney (BRK) cell co-transformed with the *Hpa*I-E fragment (0-4.3%), which essentially comprises the E1A region, and with the *Sma*I-F fragment (2.8-10.7%) which comprises most of the E1B region (see e.g. lines 3-8, page 177). As apparent from D3, the *Sma*I-F fragment comprising most of the E1B region corresponds to nucleotides 1045-3978 of Ad5. Since the sequence coding for pIX extends from nucleotides 3609 to 4028 of Ad5, the cell line of D53 lacks 50 nucleotides at the 3' end of the pIX coding sequence. The cell of D53 thus lacks pIX sequences, and only codes for a truncated pIX protein.

D54 (Kawarabayasi and Sugisaki, 1985) also teaches a primary cell comprising an adenovirus fragment that lacks pIX sequences. D54 teaches a primary rat cell transformed with a fragment consisting of Ad12 nucleotides 118-3520 (see e.g. abstract, line 4-5). As evidenced by D55, the sequence coding for pIX extends from nucleotides 3374 to 3808 of Ad12 (see e.g. Figure 3 on pages 6579-6580 of D55). Thus 288 nucleotides of the 3' end of the pIX coding sequence (i.e. 66%) are lacking in this cell line. Therefore, the cell of D53 comprises in its genome an Ad12 fragment encoding the E1A and the E1B early proteins, but only a truncated, non-functional portion of the pIX protein.

In addition, D46 teaches that pIX has to be present in the replicating vector genome to be properly expressed (see e.g. the abstract of D46). As a consequence, if one wishes to eliminate overlaps between vector DNA and adenovirus DNA inserted into the genome, pIX must be present in the viral vector and not in the cell genome.

In view of the prior art at the priority date of the opposed patent, there was therefore nothing original or inventive with the provision of a primary cell that encodes the E1 functions but not the pIX protein.

#### **4.2. Claims 1-16 and 18 of AR2**

Independent claims 1 is directed to a combination of the packaging cell of claim 19 with an adenoviral vector, wherein said adenoviral vector has no overlapping sequences which allow for homologous recombination between the cell and the vector. Since this claim is based on the packaging cell of claim 19; and since D21 teaches to eliminate the sequences in common between the cell and the vector (see e.g. column 4, lines 42-51 of D21a), it must be concluded that its subject matter does not involve an inventive step.

Claims 2, 3, 5-9, 11-13, 15 and 18 all depend either directly or indirectly on claim 1. The additional features present in these claims do not add subject-matter that goes beyond the knowledge of the person skilled in the art. Therefore, these claims lack inventiveness as well.

Claim 4 is directed to a combination of a packaging cell with an adenoviral vector, wherein said combination comprises an adenoviral vector resulting from the action of a nucleic acid polymerase comprised by the combination of claim 3. This claims is contrary to Art. 56 EPC for the same reasons as claim 3.

Claim 10 is redundant with claim 19, so the arguments presented above under section 4.1 apply *mutatis mutandis* to this claim.

Claim 16 is directed to a specific cell according to claim 10 that has been deposited at the ECACC. This cell has no additional feature that would render it inventive.

In view of the above, claims 1-16 and 18 of AR2 do not fulfill the requirements of Art. 100(a) and 56 EPC.

#### **5. Art. 100(c) and Art. 100(b) EPC**

The Patentee has filed an appeal against the OD's decision to the extend it was adverse to the patent proprietor. Insofar as the Patentee defends its patent in a scope broader than the patent as maintained, it is submitted that the patent as granted is contrary to Art. 100(c) and 100(b) EPC.

In order to avoid any unnecessary repetition, we refer to our submissions filed during the opposition, including all cited documents, demonstrating why the patent in a scope broader than the patent as maintained does not comply with Art. 100(c) and 100(b) EPC.

#### **6. Conclusion**

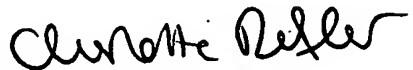
A packaging cell comprising in its genome an adenoviral sequence consisting of Ad5 nucleotides 459-3510 lacks inventiveness, and therefore all claims but claim 17 of the opposed patent as maintained in amended form are contrary to Art. 100(a) and 56 EPC.

In addition, claim 17 of the opposed patent as maintained in amended form is contrary to Art. 100(a) and 54 EPC, as shown in section 3 of the present submission.

Therefore, the request for revocation of the opposed patent in its entirety is justified.

Please stamp and return the enclosed EPO Form 1037 as evidence of safe receipt of this letter and its enclosures.

Yours truly,



Dr. Charlotte Retzler  
(European Patent Attorney)  
Direct phone no: +41-22-414-9318  
Merck Serono International S.A. Intellectual Property  
(Association registered under No. 173)

- Encl.:
- Figure 2 by Opponent 01 (D52);
  - Van den Elsen *et al.*, 1982 (D53);
  - Kawarabayasi and Sugisaki, 1985 (D54);
  - Kimura *et al.*, 1981 (D55);
  - EPO forms 1037.1 and 1037.2.